

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MATTHEW SPONER,)
)
Plaintiff,) No. 3:17-cv-02035-HZ
)
vs.) August 27, 2019
)
EQUIFAX INFORMATION SERVICES,) Portland, Oregon
LLC and WELLS FARGO BANK, N.A.,)
)
Defendants.)

TRIAL - DAY 1

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARCO A. HERNANDEZ
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

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1 P R O C E E D I N G S

2 (The Court, counsel, and the parties convene.)

3 THE COURT: Good morning. Be seated.

4 THE CLERK: Your Honor, we're here today for trial in
5 Sponer versus Wells Fargo Bank, N.A., Case No. 17-cv-02035-HZ.

6 Counsel, please state your appearances for the
7 record, starting with the plaintiff.

8 MR. SOLA: Robert Sola for plaintiff.

9 MR. SAND: Jeff Sand for plaintiff.

10 MR. JONES: Kelly Jones for plaintiff.

11 MR. PETERSON: Your Honor, Daniel Peterson for
12 Defendant Wells Fargo.

13 MR. FRANSEN: Tim Fransen for Defendant Wells Fargo.

14 THE COURT: Good morning.

15 I have a couple of commercials to wrap up things that
16 we needed to take care of.

17 One was the title of the case. I will be referring
18 to the case title as Sponer versus Wells Fargo and won't leave
19 Equifax as part of the title of the case.

20 Secondly, one of the things that we didn't talk about
21 were exhibits that there were no objections to the exhibits
22 and what we do about those. It is my preference that if there
23 wasn't an objection to the exhibits that was brought up to the
24 Court by way of a motion in limine, that we operate by way of
25 the assumption that those exhibits are admissible, so we don't

1 have to go through the process of offering, receiving, and
2 hearing further objections. That, after all, is the point of
3 the pretrial and motions in limine.

4 Is that acceptable to plaintiff?

5 MR. SOLA: Yes, Your Honor.

6 MR. PETERSON: Yes, Your Honor.

7 THE COURT: All right. So if I didn't hear an
8 objection already, it's in, no need to offer it.

9 And, Jennifer, do you have a list of those?

10 THE CLERK: I do.

11 MR. SOLA: Your Honor, just for the record, we have
12 withdrawn Exhibits 3 -- this is plaintiff. We've withdrawn
13 Exhibits 3 and 21. And so I just want, you know, those not to
14 be considered as offered or admitted by plaintiff.

15 THE COURT: All right. Thank you.

16 Next issues: One I'm sorry that I did not talk with
17 you about, and it occurred to me afterwards, and that is
18 whether or not to allow the jurors to ask questions. It is my
19 practice to allow jurors to ask questions. And I instruct
20 them -- I think there is now a uniform instruction in the
21 Ninth Circuit for allowing them to ask questions. We didn't
22 really address that.

23 One of the issues that you may be thinking about is,
24 well, if the jurors are asking questions, whose clock is
25 running while that's happening? And so if it's just very

1 brief, the clock will just continue to run on whoever's turn
2 it is. If the questions start to get lengthy, I'll just stop
3 the clock; and if I feel like I need to add back to whoever's
4 side it was, I'll just add time back.

5 The way the questions typically work is after both
6 sides are completed with the examination of a particular
7 witness, I will then turn to the jury and ask them if they
8 have any questions. Their questions are always in writing.
9 I'll have the questions returned to me. I will review them
10 briefly.

11 If it looks like questions that are just crazy, I
12 will just not ask the question and we'll continue. If it
13 looks like something that's within the realm of possibilities,
14 I'll call the lawyers up to the sidebar here and let you look
15 at the questions and see whether you have any objections to
16 them or not. If there is an objection, I will not indicate to
17 the jury who it is that is objecting.

18 Do you have any questions -- either side have any
19 questions about that procedure?

20 MR. PETERSON: No, Your Honor. That's fine with
21 defendant.

22 MR. SOLA: Your Honor, a question on the title of the
23 case. I don't know that there will be anything that the jury
24 would see, other than the verdict form or the jury
25 instructions. But I guess that's what I'd just want to know

1 or make sure that if they're on anything, that it says Matthew
2 Sponer versus Wells Fargo.

3 THE COURT: I don't know about documents that you
4 have prepared as exhibits. That's not my problem. That's
5 your problem. But it does appear on the verdict form, and the
6 caption will be modified so it just says Sponer versus Wells
7 Fargo.

8 MR. SOLA: Will you be giving the jurors written
9 copies of the instructions?

10 THE COURT: Yes.

11 MR. SOLA: So I just ask if you put a caption
12 on -- maybe you don't.

13 THE COURT: Yes. I'll make sure that all the
14 captions accurately reflect that.

15 MR. SOLA: In our pretrial, in our motions in limine,
16 we asked that the jury not hear that there was a claim made
17 against Equifax. And you seemed inclined or -- I don't want
18 to misstate -- even denied that portion.

19 But I just wanted some clarification, because the
20 defendants said, "We object insofar as they're trying to say
21 we can't blame anybody else or put fault on anybody else."
22 And I said, "We don't oppose that." My whole thing was the
23 legal claim. You said the settlement shouldn't be mentioned.

24 But I would just renew my motion, just that they
25 don't mention that there was a legal claim, but certainly are

1 free to say -- to ask whether Equifax caused harm or did
2 anything else.

3 THE COURT: I think that's consistent with my ruling,
4 in that I didn't want the settlement discussed. But to the
5 extent that anything that Equifax did caused mental distress
6 to your client, as I recall, I thought that was fair game.

7 MR. SOLA: That's right.

8 But here's my question. Can they say, "You sued
9 Equifax, didn't you?" I don't think that's relevant. And it
10 sort of ties into the settlement.

11 Do I need to go on, or would the Court agree that
12 they can't ask about that?

13 THE COURT: I don't know what your client is going to
14 testify to when your client takes the stand regarding his
15 mental distress damages or not.

16 Before the defense mentions Equifax, I'll ask that
17 they tell the Court that there's a matter for the Court; and
18 we'll talk about whether I'm going to allow them to inquire
19 about Equifax and how far I will let them go.

20 MR. SOLA: Thank you.

21 MR. PETERSON: Your Honor, just very briefly, also
22 taking a step back, in reference to Exhibits 3 and 21 which
23 were withdrawn, if we decide to introduce those, there is no
24 objection to them, I don't believe, if I'm remembering
25 correctly. Should we offer them since they've now withdrawn

1 them?

2 THE COURT: Yes.

3 MR. PETERSON: Okay.

4 THE COURT: And then, finally, the last thing, kind
5 of a cleanup matter that I need to take care of was the
6 supplemental exhibits.

7 I read the plaintiff's response to the motion to
8 allow supplemental exhibits. I reviewed the supplemental
9 exhibits. They amount to, I think, six pages. I don't know
10 if the right description is policy as much as it is procedure,
11 regarding what's supposed to happen when there is an indirect
12 fraud dispute.

13 I saw in the supplemental briefing on the part of the
14 plaintiff that a witness was deposed -- it must have been last
15 week -- about the supplemental exhibits. And at least as
16 regards questions about why the exhibits weren't previously
17 disclosed, that particular witness really wasn't able to be of
18 any assistance to any of the parties about why it wasn't
19 disclosed.

20 As I review what the issues in this particular case
21 are -- and the case really is about whether or not there was a
22 reasonable investigation in this case and whether or not the
23 defendants acted willfully, to the extent that they fell short
24 of their responsibilities under the Act. And I then
25 considered whether or not these procedures and what prejudice

1 there is to the plaintiff if these six pages are admitted into
2 evidence, particularly in light of the fact that they had an
3 individual who could respond to the substance of those
4 particular procedures and had an opportunity to question that
5 individual.

6 In light of all of those things and what this case is
7 about, I find that those exhibits are admissible. I don't
8 believe that the prejudice that the plaintiff will suffer as a
9 result of those six pages is undue prejudice.

10 I don't know that the fact that they had policies or
11 procedures in place really is as important as whether or not
12 those policies or procedures were followed; and, more
13 importantly, notwithstanding any policy or procedure, did the
14 defendants violate the law? And if they did, then there is
15 liability. If they didn't, so be it.

16 On the issue of willfulness, the fact that policies
17 exist, if they are not being followed, or they are unaware
18 that they even exist, I don't think that that necessarily
19 answers the question of willfulness or not. I believe the
20 plaintiff's case is still viable under these circumstances.

21 So to the extent that there is an objection, the
22 objection is overruled. The exhibits will be received.

23 MR. PETERSON: Thank you, Your Honor.

24 THE COURT: Then from plaintiff's perspective -- I'm
25 ready to bring the jury up. Is there anything else from your

1 perspective that I need to address?

2 MR. SOLA: No, Your Honor.

3 THE COURT: From defense perspective?

4 MR. PETERSON: No, Your Honor.

5 THE COURT: Jennifer, rack them up.

6 MR. SOLA: I'm sorry. Did you want a statement of
7 the case?

8 THE COURT: I have a very brief and generic statement
9 of the case that I include with the introduction, and it is
10 very brief. It certainly does not give justice to how
11 complicated and complex the case is from either one of your
12 perspectives. I leave that to you to fill in -- it's like the
13 coloring book. I'm just giving the brief outline, and I'm
14 going to let you fill in the colors.

15 MR. SOLA: So we could offer a brief --

16 THE COURT: During your opening statement.

17 MR. SOLA: But I just saw the trial court guidelines
18 indicated one. But if the Court has prepared its own, then we
19 don't need to do anything to introduce the case to the jury?

20 THE COURT: No. But what we will need to be prepared
21 to do -- and you reminded me -- is to tell the jury who
22 everybody you want to introduce is at your table and also who
23 your witnesses are.

24 So have your witness lists available, because at some
25 point during the introduction I'm going to turn to you and ask

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1 you, "Please tell the jurors who your potential witnesses
2 are."

3 MR. SOLA: Okay. Does that include the deposition
4 excerpts?

5 THE COURT: Yeah. I'm going to ask them if they are
6 familiar with those names or not, so I can judge whether they
7 know those people.

8 I will step off the bench. Jennifer is going to go
9 get our jury, and we'll be in recess for a few minutes.

10 MR. PETERSON: Thank you, Your Honor.

11 (A recess is then taken.)

12 (The Court, counsel, the parties, and the panel of
13 prospective jurors convene.)

14 THE COURT: Good morning. Be seated.

15 Welcome. My name is Marco Hernandez. We are going
16 to be selecting a jury for the matter of Sponer versus Wells
17 Fargo Bank. And the first step in the process is to get 16
18 jurors in my jury box.

19 Jennifer is going to call your names one by one. As
20 she calls your name, please fill in the jury box. And we will
21 do that by beginning on the right-hand side, back row of the
22 jury box.

23 So Juror No. 1 will be in the back row to my right,
24 Juror No. 2 will be then one seat over, et cetera, until we
25 get the first eight. Then we'll go with Juror No. 9 in the

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1 front row.

2 Note that the jury box has doors on that side. So if
3 you want to climb over people, you're welcome to do so, but
4 you can also enter from that side and avoid climbing over
5 people if you so desire.

6 With that, I'll have Jennifer get people in place,
7 and then we'll proceed with the process.

8 THE CLERK: Juror No. 1, Gary Weaverli,
9 W-e-a-v-e-r-l-i.

10 THE COURT: Come on up, back row, first seat to the
11 right.

12 THE CLERK: No. 2, Lynn Osterkamp, O-s-t-e-r-k-a-m-p.

13 No. 3, Dianne Horner, H-o-r-n-e-r.

14 No. 4, Natalie Luquin, L-u-q-u-i-n.

15 No. 5, Colleen Spidal, S-p-i-d-a-l.

16 No. 6, James Davis, D-a-v-i-s.

17 No. 7, Robin Collier, C-o-l-l-i-e-r.

18 No. 8, Angela Huss, H-u-s-s.

19 No. 9, Corey Rudolph, R-u-d-o-l-p-h.

20 No. 10, Kristin Walrod, W-a-l-r-o-d.

21 No. 11, Joseph Wiggins, W-i-g-g-i-n-s.

22 No. 12, Daniel Griffin, G-r-i-f-f-i-n.

23 No. 13, Rayna Flye Fairman.

24 No. 14, Brian Kragt, K-r-a-g-t.

25 No. 15, Abiel Stewart, S-t-e-w-a-r-t.

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1 No. 16, James Murphy.

2 No. 17, Alice Burson, B-u-r-s-o-n, if you would just
3 take that corner seat.

4 And then No. 18, Denise Paquette, P-a-q-u-e-t-t-e.

5 No. 19, Dae-Jin Joseph, J-o-s-e-p-h.

6 Juror No. 20, Sarah Gannon, G-a-n-n-o-n.

7 No. 21, Andrew Sharp.

8 No. 22, Bradley Johnson.

9 No. 23, Matthew Corbin, C-o-r-b-i-n.

10 No. 24, Arcus Pierce.

11 25, Kevin Bull, B-u-l-l.

12 And 26, Miriam Feldman.

13 THE COURT: Potential members of the jury, we want to
14 get to the process where we start learning a little bit about
15 you. And the way we do that is to ask you to respond to the
16 points that are listed on the monitors there. For those of
17 you in the gallery, you can't see that, but we'll give you a
18 piece of paper, because we're user friendly and don't expect
19 you to read that that far away.

20 But before you respond to any of those points or you
21 respond to any questions that I may pose to you or the lawyers
22 may pose to you later on, you have to take an oath to answer
23 those questions truthfully.

24 So I need all of the potential jurors at this time to
25 stand up, raise a hand, and take an oath.

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1 (The panel of prospective jurors is then sworn.)

2 THE COURT: Thank you. Please be seated.

3 So as I told you, I'm Marco Hernandez. By the way,
4 this is Jennifer Paget. She's my courtroom deputy. She acts
5 as the bailiff in this case, which means that she swears
6 witnesses and generally helps move things along.

7 The plaintiff in this matter is sitting to my right
8 and is being represented by Kelly Jones, Jeffrey Sand, Robert
9 Sola.

10 You can all introduce yourselves if you'd like and
11 introduce whoever else is at the table with you.

12 THE PLAINTIFF: I'm Matthew Sponer.

13 MR. SOLA: And I'm Mr. Sponer's attorney, Robert
14 Sola.

15 MR. SAND: I'm also Mr. Sponer's attorney, Jeff Sand.

16 THE COURT: The defendant in this case, Wells Fargo,
17 is being represented by Daniel Peterson and Tim Fransen, and
18 there is an IT person helping them.

19 You can introduce yourselves.

20 MR. PETERSON: Good morning. I'm Daniel Peterson,
21 representing Wells Fargo.

22 With us at counsel table is Megan Braxton. You'll
23 hear more from Ms. Braxton. She's an employee of Wells Fargo.

24 MR. FRANSEN: And I'm Tim Fransen. I also represent
25 Wells Fargo.

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1 THE COURT: Your job is to apply the facts to the law
2 that I give you. This is a civil case. It's not a criminal
3 case. You may have seen criminal cases on television or in
4 the movies and know that in a criminal case, a prosecutor has
5 to prove his case or her case beyond a reasonable doubt.
6 Civil cases are different. In a civil case, the party who has
7 to prove something only has to prove that it is more likely
8 true than not true.

9 In a few moments I'm going to be asking you some
10 questions. And after I've completed my questions, the lawyers
11 will be given an opportunity to ask follow-up questions. The
12 purpose of questions is not to argue the case or embarrass
13 you, but rather to determine your qualifications to act as
14 jurors in this case.

15 Please respond to our questions honestly and
16 sincerely. If you don't understand a question, ask us to
17 repeat it or to ask it in another way.

18 Since you are in an unfamiliar setting, among
19 strangers, it may be uncomfortable for you to be open, honest,
20 and complete in answering the questions. This process
21 requires you to overcome that discomfort and do your best to
22 be open, honest, and complete when you answer. It's extremely
23 important, and the fairness of the trial depends on it.

24 If you're asked a question that involves something
25 that you consider very private or sensitive, just let me know

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1 that; and we'll figure out a way to take that question up in a
2 more private setting.

3 When the questioning is completed, the lawyers will
4 exercise challenges. If you are not selected for this jury,
5 please do not feel that your attendance has been without
6 value. We need a substantial group of potential jurors so
7 that an impartial panel can be selected, and all of you
8 provide an important contribution to this process. Your
9 presence assures that the process is fair.

10 Before we get to the questions, however, I would like
11 for each of you to provide biographical information by looking
12 at the points that are listed there on the screen, for those
13 of you in the jury box. And then after that, we'll get to the
14 questioning part of the process.

15 So turning to Juror No. 1, if you wouldn't mind using
16 the microphone.

17 PROSPECTIVE JUROR NO. 1: Gary Weaverli. I live in
18 South Tabor. I live with my wife. She is a creative person,
19 writing and design. Education and training, she has a
20 master's degree. I have a college degree.

21 I'm a member of the Black Rock Mountain Biking
22 Association. We build mountain bike trails, 6 and 7, and do
23 not really have any court proceeding history.

24 PROSPECTIVE JUROR NO. 2: My name is Lynn Osterkamp.
25 I live in Gresham. I live by myself. I am an accounts

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1 receivable specialist. I have some college education.

2 I don't belong to any clubs. I like to read, watch
3 TV. And I haven't appeared in court before.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR NO. 3: My name is Dianne Horner.
6 I live in West Linn. I live with my husband and my son, who
7 is currently back home. My husband is a retired computer
8 systems analyst for the State of Oregon, and I'm a retired
9 copywriter.

10 I'm a chemo pal, and I do Pilates and yoga in my
11 spare time. And I also have no previous court history.

12 THE COURT: What's a chemo pal?

13 PROSPECTIVE JUROR NO. 3: Randall's Children's
14 Hospital or Doernbecher, little kids that are going through
15 chemo, we go and play with them while they are doing their
16 awful stuff.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 4: My name is Natalie Luquin.
19 I live in Portland, Beaverton, kind of like the boundary line.
20 I live with eight other people. I have a very big family. My
21 mom is a stay-at-home mom, and my dad works for Intel.

22 Hobbies: art and physical fitness. I've only
23 appeared in, like, a court for, like, an adoption for my
24 younger siblings. It was like a private adoption and -- yeah.

25 THE COURT: Thank you.

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1 PROSPECTIVE JUROR NO. 5: I'm Colleen Spidal. I live
2 in Northeast Portland, Parkrose area, by myself, with two
3 cats. I work at U.S. Bank, vice president, trust officer for
4 38 years.

5 I belong to the Portland Estate Planning Council.
6 Hobbies: art, television, reading. And I've been on a jury
7 twice: one civil, one criminal. That's about it.

8 THE COURT: Was there anything about your jury
9 experience that left a negative taste in your mouth regarding
10 our justice system?

11 PROSPECTIVE JUROR NO. 5: I love serving on jury
12 duty.

13 THE COURT: Is there anything about your banking
14 experience that would cause you difficulty in being fair and
15 impartial in this particular case?

16 PROSPECTIVE JUROR NO. 5: Absolutely not.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 6: My name is James Davis. I
19 am from West Linn, and I reside with my parents. And I am
20 unemployed, and I don't belong to any organizations or clubs.
21 I like to play basketball. And I've never been on a jury.

22 PROSPECTIVE JUROR NO. 7: My name is Robin Collier.
23 I live in Hillsboro with my wife. I work at Moore Furniture,
24 salesperson. My wife works for Albertson's. Some college.

25 I belong to the Sierra Club, read as a hobby. And

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1 I've appeared in court as a party.

2 THE COURT: Hang on just a second. You were a party
3 in a case? Was it -- I assume it was a civil case. Is that
4 correct?

5 PROSPECTIVE JUROR NO. 7: No. I was a defendant.

6 THE COURT: A defendant in a criminal case?

7 PROSPECTIVE JUROR NO. 7: DUI.

8 THE COURT: Okay. Anything about that experience
9 that would cause you difficulty being neutral in this case?

10 PROSPECTIVE JUROR NO. 7: No.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR NO. 8: My name is Angie Huss. I
13 live in Gresham by myself. I'm divorced. I work for
14 Providence Health and Services. I belong to AA and am part of
15 the Hood to Coast. And I have appeared as both a juror and a
16 party.

17 THE COURT: How long ago was your jury experience?

18 PROSPECTIVE JUROR NO. 8: Thirty-five years ago in
19 the state of Texas.

20 THE COURT: And you were a party in a case as well?

21 PROSPECTIVE JUROR NO. 8: Yes, also in Texas, about
22 30 years ago.

23 THE COURT: Anything about those experiences that
24 would cause you difficulty being neutral in this case?

25 PROSPECTIVE JUROR NO. 8: No.

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1 THE COURT: Thank you. Pass the microphone up.

2 PROSPECTIVE JUROR NO. 9: Hi. I am Corey Rudolph,
3 and I live in Lake Oswego with my wife and our two kids. I
4 went to the University of Oregon, and my wife got her master's
5 degree at PSU. And I am a real estate broker in the Portland
6 area.

7 I have not been in court in any -- as any party or
8 witness or a juror. And for hobbies, free time is just with
9 the family.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR NO. 10: Hi. I'm Kristin Walrod.
12 I live in Portland, North Portland. I live with my husband
13 and three school-age kids. And my husband is a venture
14 capitalist with a company here locally, and I am a writer and
15 have a master's in creative writing, and I do some teaching.

16 I'm on a couple of organizational boards, the Gray
17 Family Foundation and Sitka Center for Art and Ecology, which
18 is out on the coast. And I like to write and read and have a
19 very active family life. And I haven't appeared in a court
20 proceeding before.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR NO. 11: I'm Joseph Wiggins. I
23 live in Gresham with my wife and stepdaughter. I work for
24 Tri-Met and also on a business cleaning carpets. My wife and
25 I both have college educations. Not a lot of hobbies or

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1 activities. I have been a juror twice.

2 THE COURT: How long ago were you a juror?

3 PROSPECTIVE JUROR NO. 11: I think once was about 12
4 years ago and the other probably about eight years ago maybe.

5 THE COURT: Do you remember what the nature of the
6 cases were?

7 PROSPECTIVE JUROR NO. 11: Both were criminal cases.

8 THE COURT: Anything about those experiences that
9 left a negative taste in your mouth regarding our justice
10 system?

11 PROSPECTIVE JUROR NO. 11: Nothing at all.

12 THE COURT: Anything about your experiences that
13 would cause you difficulty being neutral in this case?

14 PROSPECTIVE JUROR NO. 11: No.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 12: My name is Daniel Griffin.
17 I live in Lake Oswego with my parents. I work as a warehouse
18 associate for Amazon.com. I don't belong to any organizations
19 or clubs.

20 I do a lot of gaming and like reading; that sort of
21 stuff is my hobbies. And I have appeared in a court
22 proceeding as a party.

23 THE COURT: How long ago was that?

24 PROSPECTIVE JUROR NO. 12: About 15 years ago.

25 THE COURT: Anything about that experience that

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1 causes you difficulty being neutral in this case?

2 PROSPECTIVE JUROR NO. 12: No.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR NO. 13: My name is Rayna Flye
5 Fairman. I live in Beaverton with my husband. We're both
6 researchers. We both have doctorates.

7 Organizations, New Sweden and Romance Writers of
8 America. Hobbies -- sorry -- reading, writing, crafting,
9 gardening. And I've never appeared in a court proceeding.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR NO. 14: Brian Kragt. I live in
12 Banks with my wife. I'm a telecommunications contractor,
13 semi-retired. Incidentally, one of my customers is Wells
14 Fargo. I don't know if that's an issue. My wife is a
15 preschool teacher.

16 I just belong to our local church. Hobbies, I enjoy
17 golf and hiking. I did appear one time as a juror many years
18 ago. I don't remember exactly, probably 10.

19 THE COURT: Do you remember the nature of the case?

20 PROSPECTIVE JUROR NO. 14: It was a criminal case.
21 It was very brief. It was -- the case completed within one
22 day.

23 THE COURT: You said that Wells Fargo is one of your
24 customers?

25 PROSPECTIVE JUROR NO. 14: Yes.

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1 THE COURT: Can you tell me what it is you do for
2 Wells Fargo?

3 PROSPECTIVE JUROR NO. 14: Repair work. They have a
4 project now where they're replacing a lot of their phone
5 systems, so showing up and replacing phone equipment or
6 repairing things, so --

7 THE COURT: Is there anything about that relationship
8 that causes you difficulty being neutral in this case?

9 PROSPECTIVE JUROR NO. 14: I don't believe so.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR NO. 15: Abiel Stewart. I live in
12 Oregon City with my brother and dad. I'm a data entry clerk.
13 I don't belong to any clubs. I read. And I was a juror over
14 10 years ago.

15 THE COURT: Do you remember the nature of the case?

16 PROSPECTIVE JUROR NO. 15: It was criminal.

17 THE COURT: Anything about that experience that
18 causes you difficulty being neutral in this case?

19 PROSPECTIVE JUROR NO. 15: The judge just basically
20 dismissed us after three days and decided for us.

21 THE COURT: Anything about that that --

22 PROSPECTIVE JUROR NO. 15: I just thought it was a
23 waste of three days and a lot of arguing.

24 THE COURT: That happens sometimes.

25 Again, back to my original question: The overall

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1 experience, anything about that experience that left a bad
2 taste in your mouth that causes you difficulty being neutral
3 in this case?

4 PROSPECTIVE JUROR NO. 15: No.

5 PROSPECTIVE JUROR NO. 16: My name is Jake Murphy.
6 I live in Milwaukie with my fiancée and my children. I am a
7 sales representative and she is a bookkeeper. I have some
8 college education and she has her GED.

9 I don't belong to any organizations or clubs.
10 Activities would be golf and chasing the kids around.

11 I was a party about four years ago to a DUI.

12 THE COURT: Again, anything about the justice system
13 that causes or what happened to you that causes you concern in
14 being neutral in this case?

15 PROSPECTIVE JUROR NO. 16: No, sir.

16 PROSPECTIVE JUROR NO 17: My name is Alice Burson.
17 I live in Carlton, Oregon. I live with my husband. He's
18 retired from metal polishing. I've retired twice from
19 accounting. I currently work a couple days painting pet
20 portraits in Yamhill.

21 I don't belong to any clubs. We do go to church on
22 Sundays. Besides painting, I spin wool, do all sorts of
23 needlecraft. And I have appeared in court twice as a juror,
24 twice as a witness.

25 THE COURT: So let's talk about that. How long ago

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1 were you a juror?

2 PROSPECTIVE JUROR NO 17: It's probably been 15 years
3 ago the last time.

4 THE COURT: And do you remember the nature of the
5 cases?

6 PROSPECTIVE JUROR NO. 17: Yeah. One was civil and
7 one was criminal.

8 THE COURT: Did you have any strong feelings or
9 responses to the experience?

10 PROSPECTIVE JUROR NO. 17: No. It was really
11 fascinating.

12 THE COURT: And there was something else?

13 PROSPECTIVE JUROR NO. 17: Witnesses.

14 THE COURT: You were a witness in the case. How long
15 ago was that?

16 PROSPECTIVE JUROR NO. 17: One was months ago, and
17 the other was six years ago. And both of them were family
18 cases. I was Sunday school teacher to the children.

19 THE COURT: Anything about your experiences with the
20 court system that causes you difficulty being neutral in this
21 case?

22 PROSPECTIVE JUROR NO. 17: Not at all.

23 THE COURT: You said that you retired from
24 accounting?

25 PROSPECTIVE JUROR NO. 17: Twice.

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1 THE COURT: Twice. Was Wells Fargo ever one of
2 your --

3 PROSPECTIVE JUROR NO. 17: No. I retired from
4 Bonneville Power and then again from an organization, a
5 private organization, that dealt with the disabilities of
6 adults.

7 THE COURT: Okay. Thank you.

8 PROSPECTIVE JUROR NO. 18: My name is Denise
9 Paquette. I live in Astoria, alone, and I'm retired. I have
10 a bachelor's degree. No organizations or clubs. And I like
11 to read and cook and paint. And I've been a juror once in the
12 past.

13 THE COURT: How long ago was that?

14 PROSPECTIVE JUROR NO. 18: About four years.

15 THE COURT: Do you remember the nature of the case?

16 PROSPECTIVE JUROR NO. 18: It was criminal.

17 THE COURT: Anything about that experience that would
18 cause you difficulty being neutral in this case?

19 PROSPECTIVE JUROR NO. 18: Not at all.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 19: My name is Dae-Jin Joseph.
22 I live in Hillsboro. I live with my wife and two kids. She
23 is a textile designer, and I work in manufacturing. She has a
24 BFA. I have a BA.

25 I don't belong to any organizations or clubs. I

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1 enjoy fishing and camping for hobbies. I proceed -- or I was
2 in a court proceedings as a juror in California about 11 years
3 ago, and it was a criminal case.

4 THE COURT: Anything about that experience that
5 causes you difficulty being neutral?

6 PROSPECTIVE JUROR NO. 19: No.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR NO. 20: My name is Sarah Gannon.
9 I live out in Beaverton. I live with my mother. I am a
10 kitchen worker at a nursing home, and I have some college.

11 I don't belong to any clubs. My hobbies are running
12 and wasting time on the Internet, and I've never been in court
13 before.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 21: My name is Andrew Sharp.
16 I live in Southwest Portland with my wife and two sons. My
17 wife works for a financial software company. One of her
18 clients was Wells Fargo, no longer. I am a high school
19 teacher. We both have master's degrees.

20 We belong to our local church. I enjoy skiing and
21 playing soccer. And I received an MIP 14 years ago.

22 THE COURT: Did your wife ever express any strong
23 feelings about her relationship with Wells Fargo? And, by the
24 way, that's a yes or no question.

25 PROSPECTIVE JUROR NO. 21: Will you repeat that

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1 again?

2 THE COURT: Yes. Did your wife ever express strong
3 feelings regarding her relationship with Wells Fargo?

4 PROSPECTIVE JUROR NO. 21: No.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR NO. 22: My name is Bradley
7 Johnson. I live in the Washington County part of Portland. I
8 live with my mother and father. I work in physical therapy
9 for OHSU Tuality, out in Forest Grove. I have a bachelor's
10 degree.

11 Organizations, I belong to the 107IST. Hobbies and
12 activities is soccer. And then I've been a party in a court
13 proceeding before.

14 THE COURT: How long ago were you a party?

15 PROSPECTIVE JUROR NO. 22: About 14 years ago.

16 THE COURT: Do you remember if that was civil or
17 criminal case?

18 PROSPECTIVE JUROR NO. 22: Criminal.

19 THE COURT: Anything about that experience that
20 causes you difficulty being neutral?

21 PROSPECTIVE JUROR NO. 22: No.

22 THE COURT: I'm sorry. Did you have any other court
23 experiences as well?

24 PROSPECTIVE JUROR NO. 22: No.

25 THE COURT: Thank you.

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1 PROSPECTIVE JUROR NO. 23: Good morning. My name is
2 Matt Corbin. I live in west Beaverton. My wife is currently
3 living out of state. We are both professional drivers. She
4 has a degree. I have a high school diploma.

5 We attend our local church. Currently don't have
6 time for hobbies, unfortunately. And I have been in court
7 proceedings as a juror and a witness.

8 THE COURT: How long ago were you a juror?

9 PROSPECTIVE JUROR NO. 23: Approximately 20 to 30
10 years ago.

11 THE COURT: How long ago were you a witness?

12 PROSPECTIVE JUROR NO. 23: Two years ago.

13 THE COURT: What kind of a case was it?

14 PROSPECTIVE JUROR NO. 23: The witness one? It was a
15 prowler in our neighborhood.

16 THE COURT: Was there anything about your experiences
17 with the justice system that would cause you difficulty being
18 neutral in this case?

19 PROSPECTIVE JUROR NO. 23: No.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 24: Good morning. My name is
22 Arcus Pierce. I live over in Southeast Portland. I live with
23 my wife and two kids. I work for the USDA as a statistician;
24 and my wife works over at the hospital, ER department, for
25 admitting.

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1 I don't belong to any organizations or clubs. I've
2 got a college degree in ag business management. My wife has a
3 high school diploma. Activities: hunting, fishing, camping.

4 I was a juror once about 20 years ago in the state of
5 Texas.

6 THE COURT: Anything about that that causes you
7 problems being neutral in this case?

8 PROSPECTIVE JUROR NO. 24: No, sir.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR NO. 25: Hi. My name is Kevin
11 Bull. I live in North Portland with my girlfriend. I just
12 moved in about a month ago. I have my own business. It's a
13 start-up. I help real estate developers connect with
14 investors. My girlfriend, she's in marketing at a mortgage
15 company.

16 I don't belong to any organizations or clubs.
17 Hobbies: hiking, snowboarding, camping. And I have not
18 appeared in any court.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR NO. 26: I am Miriam Feldman, and I
21 live with my husband in Lake Oswego. We are both retired.
22 We're both college educated.

23 Don't belong to any organizations or clubs. My
24 hobbies are gardening, traveling, and volunteer work. And I
25 was an alternate juror in a civil case about 13, 14 years ago.

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1 THE COURT: Anything about that experience that makes
2 it difficult for you to be neutral in this case?

3 PROSPECTIVE JUROR NO. 26: No.

4 THE COURT: Thank you.

5 Then turning to some of the more formalized
6 questioning process, now that we've gotten to know a little
7 bit about each of you, I want to know whether any of you know
8 the people that have introduced themselves to you, any of the
9 lawyers or the parties in this case.

10 If you know the people sitting at the tables or think
11 you might be familiar with them, please raise a hand.

12 The lawyers are going to introduce and tell us who
13 their potential witnesses are. Please listen to the names
14 carefully. I'm going to ask the same question after they've
15 done that.

16 MR. SOLA: Thank you, Your Honor.

17 Mr. Sponer's witnesses in this trial will be himself,
18 Matthew Sponer; his wife, Ana Rodighiero; his mother, Mary
19 Frances Barron; Evan Hendricks; Thomas Tarter; and also these
20 people that are affiliated with Wells Fargo: Ashley Grier,
21 Montressa Ebron, Brian Funsch, Colin Hollomon, William
22 Brady -- I'm sorry. I have my back to you -- Bets Berg; and
23 then a representative of Equifax named Celestina Gobin.

24 THE COURT: Thank you.

25 For the defense?

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1 MR. PETERSON: Thank you.

2 We're going to be calling Megan Braxton as a witness.
3 We're going to be calling an individual named John Cooper,
4 William Brady, Dean Binder, and Brian Kelley.

5 THE COURT: So you've heard the potential witness
6 list. If any of you think you might know those individuals or
7 be familiar with them in some way, please raise a hand.

8 Hang on just a second. We're going to put a
9 microphone in your hand, so our court reporter can hear what
10 you want to tell us. And if you wouldn't mind starting by
11 saying your name.

12 PROSPECTIVE JUROR NO. 3: Dianne Horner. And a
13 friend of mine has a brother named Brian Kelley. I don't know
14 if it's the same one.

15 THE COURT: Let's assume for just the sake of
16 conversation that it is the same one, although that seems like
17 a very common name. Is there anything about your relationship
18 with that Brian Kelley that would make it difficult for you to
19 be neutral in this case?

20 PROSPECTIVE JUROR NO. 3: No.

21 THE COURT: Would you be able to listen to and judge
22 his testimony as you would anybody you didn't happen to know?

23 PROSPECTIVE JUROR NO. 3: Yes.

24 THE COURT: Thank you.

25 Anybody else?

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1 Next question. This case involves Mr. Sponer suing
2 Wells Fargo. The plaintiff alleges that the defendant
3 negligently and willfully violated the Fair Credit Reporting
4 Act after the defendant reported to a national credit
5 reporting agency that a car loan account that was opened by a
6 thief using plaintiff's identity belonged to plaintiff.

7 Have any of you heard or read about this case? If
8 so, please raise a hand.

9 This case will take approximately four days to try.
10 I believe the jury will have the case in their hands this
11 Friday. It is possible that you will not finish deliberating
12 on Friday. It may be that you won't complete your
13 deliberations until Tuesday. Because Monday is a holiday, we
14 won't be working on Monday, so the case would be carried over
15 to complete your deliberations on Tuesday if you're not
16 finished by Friday. It's possible you will finish by Friday,
17 but I don't know the answer to that.

18 I'm fairly confident that the case will be done, all
19 of the lawyers' work will be done, and it will be in the hands
20 of the jury on Friday. And once that happens, I lose control.
21 It is up to the jury to decide how long they're going to
22 deliberate.

23 I need to know whether the fact that they may be
24 carried over until the following Tuesday creates an
25 impossibility -- I will use the word -- for any of the

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1 potential jurors.

2 But before you raise your hand on that question,
3 please realize that your definition of "impossibility" and my
4 definition of "impossibility" will differ. And with that
5 caveat, is there anybody that cannot sit between now and the
6 possibility that it will end on next Tuesday, although it may
7 end on Friday? If that creates a special problem for you,
8 please raise a hand.

9 Again, say your name first.

10 PROSPECTIVE JUROR NO. 1: It's Gary Weaverli.

11 I have a six-day vacation starting tomorrow morning.
12 And if I miss it, I'll be very cranky.

13 THE COURT: Are you going out of town?

14 PROSPECTIVE JUROR NO. 1: Yes, yes, out of town.
15 It's our summer vacation we've been planning for about three
16 months. My wife would also be very cranky.

17 THE COURT: Oh, I don't want that.

18 All right. Thank you. I'll get back to you in just
19 a minute.

20 Anybody else?

21 PROSPECTIVE JUROR NO. 25: Hi. I'm Kevin Bull. I
22 have an important business meeting tomorrow in Bend,
23 introducing two business partners.

24 I say important. I'm kind of a startup business for
25 myself, and it means a lot for the future of my company.

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1 THE COURT: Thank you.

2 Anybody else?

3 PROSPECTIVE JUROR NO. 24: Arcus Pierce.

4 More just a clarification, as far as next Friday
5 evening, I'm flying out to put my dad in a nursing facility in
6 Texas. If it's not going to be going that long, it's not a
7 problem.

8 THE COURT: It will go until Friday. I leave it up
9 to the jurors to decide how late in the evening to deliberate.
10 So if you have to fly out Friday evening, for example, and
11 you're back by Tuesday morning, because the deliberations
12 would continue on Tuesday morning, that's okay. That works
13 for me.

14 PROSPECTIVE JUROR NO. 24: Oh, I'm sorry. I wasn't
15 clear. I fly out on September 6th, the following Friday.

16 THE COURT: Oh, the following Friday. No worries.
17 This will not last that long.

18 PROSPECTIVE JUROR NO. 23: Matt Corbin. My employer
19 has asked that I convey how inconvenient it is that I'm away
20 from work for this situation, because basically I'm their only
21 delivery driver.

22 THE COURT: Thank you, Mr. Corbin.

23 PROSPECTIVE JUROR NO. 22: Brad Johnson. I recently
24 started a new position in my company. And due to staffing of
25 my clinic, I'm missing 70 percent of the training. I'm

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1 currently only attending 30 percent.

2 That position starts on September 9th, so my training
3 is mixed in with staffing my clinic between now and then. So
4 if I was attending the trial, I would be able to attend
5 exactly zero of my training to go live on September 9th.

6 THE COURT: Thank you. Anybody else?

7 PROSPECTIVE JUROR NO. 21: Andrew Sharp. I'm a high
8 school teacher. Today was our first day of school. I'll be
9 missing the first week of school with my students. I'm also
10 the boys soccer coach. Our first game is the 5th. So I'd
11 also be missing the first week of training with my boys.

12 THE COURT: Thank you, Mr. Sharp.

13 PROSPECTIVE JUROR NO. 18: Denise Paquette. Mine is
14 a financial hardship. I live in Astoria, and so I have to
15 stay in a hotel during this period, and I'm on a fixed income
16 and can't afford to pay for it.

17 THE COURT: For a hotel?

18 PROSPECTIVE JUROR NO. 18: Uh-huh.

19 THE COURT: Oh, we'll pay for that.

20 PROSPECTIVE JUROR NO. 18: If that can be arranged.
21 I had to pay last night, and it's my rent money that I had to
22 use.

23 THE COURT: Yeah, I'm sorry. If you are chosen for
24 this jury --

25 PROSPECTIVE JUROR NO. 18: I'm happy to serve

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1 otherwise.

2 THE COURT: -- I'll make sure that it gets paid for.

3 PROSPECTIVE JUROR NO. 18: Okay. Thank you.

4 THE COURT: You're welcome.

5 PROSPECTIVE JUROR NO. 4: I just have a question.

6 You said it could carry over until Tuesday? How late would

7 that last or is it up to like --

8 THE COURT: Judges -- if you didn't know this, I'll
9 give you a secret -- ultimate control freaks, right, because
10 we have total control, we think, over this kind of section of
11 the world until the jury gets the case; and then it is
12 completely up to the jury how they want to do their
13 deliberations, how late they want to stay. It's all up to the
14 jury on that point, and we stay out of that. That's your
15 business.

16 PROSPECTIVE JUROR NO. 4: Okay.

17 THE COURT: Okay. Any other questions?

18 So Juror No. 1, Mr. Weaverli, I am excusing you,
19 because I don't want you to be cranky and I want you to go on
20 your vacation. You are excused. Thank you so much for your
21 service.

22 PROSPECTIVE JUROR NO. 1: Thank you very much. My
23 wife will be delighted.

24 THE COURT: Sure.

25 And, Mr. Bull, thank you for your service. You are

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1 excused.

2 PROSPECTIVE JUROR NO. 25: Thank you, sir.

3 THE COURT: Mr. Johnson, you are excused. Thank you
4 for your service.

5 Mr. Sharp, you are excused. Thank you for your
6 service. Good luck with your teaching.

7 PROSPECTIVE JUROR NO. 21: Thank you.

8 THE COURT: And I'm hanging on to everybody else.

9 For those of you that remain, have any of you, anyone
10 in your family or any of your close friends worked for a bank
11 or credit union? If so, please raise a hand.

12 And I'm going to ask you to just kind of explain a
13 little bit what your experience was, if you wouldn't mind.

14 PROSPECTIVE JUROR NO. 2: My mother worked for Wells
15 Fargo in accounts receivable for 20 years.

16 THE COURT: All right. Is there anything about that
17 that causes you -- I mean, Wells Fargo is one of the parties.
18 You've supposed to be neutral in this case. Can you do your
19 job?

20 PROSPECTIVE JUROR NO. 2: Yeah.

21 PROSPECTIVE JUROR NO. 3: My father was an appraiser
22 for banks and credit unions in Spokane.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 5: My mother worked at various
25 credit unions for 30 years.

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1 THE COURT REPORTER: And would you please state your
2 name.

3 PROSPECTIVE JUROR NO. 5: Colleen Spidal.

4 PROSPECTIVE JUROR NO, 7: My name is Robin Collier.

5 In my job in sales in Moore Furniture, I sell Wells
6 Fargo products or I have sold Wells Fargo products, as their
7 financing.

8 THE COURT: Anything about that connection that
9 causes you difficulty being neutral in this case?

10 PROSPECTIVE JUROR NO. 7: I had to, several times,
11 listen to complaints about Wells Fargo. And our company
12 discontinued their relationship with Wells Fargo.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 7: In general, I don't think I
15 have a great opinion.

16 THE COURT: So what's going to happen is you're going
17 to hear evidence and testimony from witnesses that are either
18 here or testifying through their depositions. At the end of
19 the case, I'm going to give you instructions.

20 At the end you're going to have to decide the case
21 based on the evidence here in court, not based on your
22 experience outside of court. Do you understand that?

23 PROSPECTIVE JUROR NO. 7: Yes.

24 THE COURT: Can you do that fair and impartially?

25 PROSPECTIVE JUROR NO. 7: Yes.

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1 PROSPECTIVE JUROR NO. 8: My name is Angie Huss. And
2 30 years ago I worked for U.S. Bank in Texas, not related to
3 U.S. Bank that we have here, in the finance department. I was
4 basically a clerk. I didn't do any decision-making.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR NO. 9: My name is Corey Rudolph.
7 And I work with lenders regularly for work as a broker. And
8 also my mother-in-law works for Columbia -- Columbia Bank.

9 THE COURT: Thank you.

10 There is somebody right there, Jennifer, to your
11 right.

12 PROSPECTIVE JUROR NO. 11: I'm Joseph Wiggins. My
13 mother worked for what's now Bank of America. And my brother
14 worked for several different banks, including Wells Fargo.

15 THE COURT: Anything about the connection with Wells
16 Fargo that causes you difficulty being neutral in this case?

17 PROSPECTIVE JUROR NO. 11: Not at all.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 17: This is a long time.
20 About 45 years ago I worked for U.S. Bank in the check paying
21 department.

22 THE COURT REPORTER: Please state your name.

23 PROSPECTIVE JUROR NO. 17: Alice Burson.

24 THE COURT: Anybody else raise their hand?

25 For those of you that raised your hand and I didn't

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1 ask this question, I will ask it now. Is there anything about
2 the association that you had with someone -- with someone that
3 worked with a bank that would cause you difficulty being
4 neutral in this case? If so, please raise a hand again.

5 Have any of you or anyone in your family, close
6 friends or associates, worked for a collection agency or a
7 collections department? If so, please raise a hand.

8 PROSPECTIVE JUROR NO. 9: My name is Corey Rudolph.
9 And one of my best friends worked in collections at Wells
10 Fargo.

11 THE COURT: Same question. Anything about that
12 relationship that causes you difficulty being neutral in this
13 case?

14 PROSPECTIVE JUROR NO. 9: No.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 2: Lynn Osterkamp. I work for
17 collections at Franz Bakery.

18 THE COURT: And, again, anything about that that
19 causes you difficulty being neutral in this case?

20 PROSPECTIVE JUROR NO. 2: (Shakes head.)

21 THE COURT: Answer out loud, please.

22 PROSPECTIVE JUROR NO. 2: No.

23 THE COURT: All right. Next question: Have any of
24 you or members of your family or close associates ever worked
25 in an accounts receivable department? If so, please raise a

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1 hand.

2 PROSPECTIVE JUROR NO. 2: Lynn Osterkamp. I work at
3 accounts receivables at Franz Bakery as a collector.

4 THE COURT: Thank you.

5 And then I think there is a hand at the very end.

6 PROSPECTIVE JUROR NO. 8: Angie Huss. I'm currently
7 an accounts receivable specialist for Providence Health and
8 Services.

9 THE COURT: Thank you.

10 Anybody else?

11 PROSPECTIVE JUROR NO. 16: Jake Murphy. I'm like
12 co-partner in accounts receivable at our office. Whenever our
13 actual accountant is out of the office, I take care of all of
14 it.

15 THE COURT: Thank you.

16 Again, for any of you that raised your hand, is there
17 anything about the experience with accounts receivable that
18 causes you difficulty being neutral in this case? If so,
19 please raise a hand again.

20 Have any of you or any members of your family or
21 close associates been employed by a credit reporting agency?
22 If so, please raise a hand.

23 Have any of you or members of your family or close
24 associates ever had a job or a company that furnished credit
25 information to credit reporting agencies?

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1 Have any of you or members of your family ever had a
2 job that involved the handling of customer complaints? If so,
3 please raise a hand.

4 PROSPECTIVE JUROR NO. 7: I already talked about it,
5 though.

6 THE COURT: Go ahead. Say your name, please.

7 PROSPECTIVE JUROR NO. 7: Robin Collier. And the
8 customers that I would -- I did handle complaints about some
9 of those products that I sold from Wells Fargo.

10 THE COURT: Yes. Thank you. Okay.

11 More hands?

12 PROSPECTIVE JUROR NO. 12: Daniel Griffin. I used to
13 do, like, customer support for, like, Apple and, like,
14 Microsoft over the phone. And a lot of times we'd get people
15 calling in, complaining about how, like, their kids would buy
16 random video games on their account.

17 THE COURT: Okay. Thank you.

18 Anybody else?

19 PROSPECTIVE JUROR NO. 11: Joseph Wiggins. I've had
20 to deal with some complaints in the business that I own, but
21 also working for Tri-Met, driving a bus, I get complaints
22 every day.

23 THE COURT: Yes, you do.

24 All right. For those of you that raised your hand to
25 the initial question, the same question applies: Anything

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1 about those experiences that causes you difficulty being
2 neutral? If so, please raise a hand.

3 Have any of you held a position that required you to
4 extend or deny credit, that was your job to make that
5 decision? If so, please raise a hand.

6 Is there anyone here that believes that there is too
7 much business regulation? If so, please raise a hand.

8 Do any of you have a negative reaction or negative
9 sense about somebody simply because that individual has
10 brought a lawsuit? If so, please raise a hand.

11 Is there anybody here who starts off with an
12 assumption that in this world there are simply too many
13 lawsuits? If that describes you, please raise a hand.

14 And can you describe your feelings about that,
15 please?

16 PROSPECTIVE JUROR NO. 15: Abiel Stewart. I think
17 way too many are suit happy. They just need to take
18 responsibility for what they do in their life and not expect
19 other people to pay for it.

20 THE COURT: Thank you for sharing your feelings about
21 that.

22 Is there anything about that feeling that would cause
23 you difficulty in being neutral in this case?

24 PROSPECTIVE JUROR NO. 15: I don't think so.

25 THE COURT: Again, your job is to decide this case on

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1 its merits, so notwithstanding that you don't like the fact
2 that there are too many lawsuits, you're going to have to
3 decide this case based on the evidence you hear and the law
4 that I give you. Are you okay with that?

5 PROSPECTIVE JUROR NO. 15: Yeah.

6 THE COURT: Thank you.

7 Is there anybody who thinks there are too many
8 lawsuits against banks? If that describes you, please raise a
9 hand.

10 Do any of you have a perspective that says that it's
11 not possible or appropriate to award damages for non-monetary
12 harm, like emotional distress? Is there anybody that says, we
13 shouldn't be giving awards to people that suffer emotional
14 distress, that's just not a good thing? If that describes
15 you, please raise a hand.

16 Is there anybody who feels that if the plaintiff has
17 proven their case, that they would not consider awarding
18 damages? If that describes you, please raise a hand.

19 That's kind of a packed question.

20 Is there anybody here who feels that even if the
21 plaintiff has proven its case and proven its entitlement to
22 punitive damages, that you have something against punitive
23 damages that you're unwilling to consider even awarding them?
24 If that describes you, please raise a hand.

25 Is there anybody here that has held or holds a Wells

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1 Fargo account? If so, please raise a hand.

2 There's lots of you. I'm not going to go through you
3 individually.

4 Is there anything about the fact that you hold a
5 Wells Fargo account that would cause you difficulty in being
6 neutral in this case? If so, raise your hand again.

7 Have any of you been observing or following news
8 reports regarding Wells Fargo? And, if so, please raise a
9 hand.

10 A few of you have.

11 For those of you that raised your hand, is there
12 anything about your familiarity with those news stories that
13 would cause you difficulty being neutral in this case? If so,
14 please raise your hand again.

15 Is there anyone here that has trouble with the notion
16 that, again, this case cannot be decided on news stories that
17 you read outside? It has to be decided on what happens here
18 in court. Does anybody have any difficulty with that notion?
19 If so, please raise a hand.

20 Is there anybody here who starts off with a negative
21 impression of Wells Fargo, that there's just something about
22 that bank that you don't like? If that describes you, please
23 raise a hand.

24 Okay. Use the microphone and say your name, please.

25 PROSPECTIVE JUROR NO. 9: Corey Rudolph.

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1 THE COURT: And before you get into the details of
2 why you might have that sense, is that a feeling that, from
3 your perspective, is a strongly held feeling?

4 PROSPECTIVE JUROR NO. 9: In the middle.

5 THE COURT: Okay. Somewhere in the middle.

6 And is there anything about that in-the-middle
7 feeling that would cause you difficulty, again, being neutral
8 in this case, deciding this case on its merits?

9 PROSPECTIVE JUROR NO. 9: No.

10 THE COURT: Anybody else?

11 PROSPECTIVE JUROR NO. 19: My name is Dae-Jin Joseph.
12 Coming into this case, I already have some negative
13 perspective of Wells Fargo Bank. I do not --

14 THE COURT: Hang on just a second. Let me ask you
15 some questions about that. I want to focus the question on
16 whether or not that feeling is a strongly held impression,
17 middle-of-the-road impression, or it's just something --

18 PROSPECTIVE JUROR NO. 19: I'd have to say it would
19 be a strong feeling.

20 THE COURT: And is the feeling strong enough that you
21 feel you cannot be neutral in this case?

22 PROSPECTIVE JUROR NO. 19: No.

23 THE COURT: I'm not quite sure what that means.

24 PROSPECTIVE JUROR NO. 19: I would be able to be
25 neutral in this case.

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1 THE COURT: Okay. Thank you.

2 Anybody else?

3 Thank you for sharing that, both of you. Thank you.

4 Do any of you have, start off with, again, a negative
5 sense about banks, lenders, or credit bureaus? If that
6 describes you, please raise a hand.

7 Have any of you been engaged in a dispute with a
8 bank, lender, or credit bureau about the information on your
9 report? If that describes you, please raise a hand.

10 Have any of you ever been the victim of identity
11 theft? If that describes you, please raise a hand.

12 Again, for those of you that raised your hand, is
13 there anything about that experience that would cause you
14 difficulty being neutral in this case? If so, raise your hand
15 again.

16 Have any of you been a plaintiff in a lawsuit,
17 unrelated to a family matter, that you were a plaintiff, that
18 you brought a lawsuit against somebody? If that describes
19 you, please raise a hand.

20 So let me then turn to the plaintiff in this case and
21 see whether or not there are any follow-up questions.

22 Turning to the plaintiff?

23 MR. SOLA: Thank you, Your Honor.

24 First, for Ms. Osterkamp, because you answered a
25 couple of questions yes, being the nature of your job,

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1 accounts receivable and collections, and as you heard from the
2 Court, Mr. Sponer is the victim of identity theft, but there
3 was an account that was attributed to him falsely. And so I'm
4 just wondering, as a collector, my assumption is you probably
5 get some people that say they don't owe money that maybe they
6 do owe. Have you experienced that?

7 PROSPECTIVE JUROR NO. 2: Well, I collect for
8 businesses.

9 I collect for businesses, so it's a lot of
10 researching and providing backup and then resubmitting
11 invoices, but it's for other companies. It's not individuals.

12 MR. SOLA: All right. I guess, as the Court has
13 phrased some of these questions, because you're on the
14 collections side, do you sort of favor the bank over the
15 individual or the collector over the business?

16 PROSPECTIVE JUROR NO. 2: I don't think so. I mean,
17 I think it's -- I guess it can go both ways, you know, where
18 you're working and you're trying to collect, you have
19 that -- you want to, you know, make sure you're collecting for
20 your company. You might get frustrated, but I don't usually
21 take it personally.

22 MR. SOLA: Have you ever run into situations where
23 your company is trying to collect something that is absolutely
24 not owed or there is a mistake, you're trying to collect a
25 certain amount --

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1 PROSPECTIVE JUROR NO. 2: Yes.

2 MR. SOLA: -- and it turns out you're not entitled to
3 that much amount?

4 PROSPECTIVE JUROR NO. 2: That's correct, yes.

5 MR. SOLA: And what do you do in those situations
6 where you realize that the person you're claiming owes the
7 money doesn't owe that much money?

8 PROSPECTIVE JUROR NO. 2: Then in my case, we might
9 provide backup to get the money, and they provide the proof
10 that they don't owe it. And so at that point we no longer go
11 after that, you know.

12 MR. SOLA: Do you think it's important to try to
13 resolve --

14 PROSPECTIVE JUROR NO. 2: Absolutely, yes.

15 MR. SOLA: -- a situation like that very quickly?

16 PROSPECTIVE JUROR NO. 2: Yes, yes.

17 MR. SOLA: Let me ask Daniel Griffin. You were party
18 to a case, and so I just wanted to know a little bit more
19 about that. I don't mean to intrude. I know sometimes
20 litigants come out of the system with a bad view. And so what
21 was your case about?

22 PROSPECTIVE JUROR NO. 12: It was criminal. I was
23 with someone that was shoplifting, and I got tagged with it as
24 well, because he was a friend and I couldn't actually fight it
25 or anything because I was moving at, like, the end of the

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1 month, and I had to deal with it that way.

2 MR. SOLA: Did you feel the system was unfair?

3 PROSPECTIVE JUROR NO. 12: I felt the situation
4 needed just a perspective. I was like in a catch-22 sort of.
5 I don't really have much of an option here. And, you know, it
6 kind of -- to be completely honest, it kind of screwed up my
7 life for 10 years or so, until I could get it taken care of
8 and get it expunged.

9 MR. SOLA: So it sounds like you felt you weren't
10 really responsible, you were just caught in that situation,
11 but you were accused of something you didn't really do. Is
12 that fair to say?

13 PROSPECTIVE JUROR NO. 12: Right.

14 MR. SOLA: And because of that false accusation, to
15 use your word, it screwed up your life for quite a while; is
16 that right?

17 PROSPECTIVE JUROR NO. 12: Yes.

18 MR. SOLA: But in this case, could you still be fair
19 to a person on a plaintiff's side? Since you were a defendant
20 and you felt that it didn't work out for you, could you be
21 fair to the plaintiff?

22 PROSPECTIVE JUROR NO. 12: Yeah.

23 MR. SOLA: Thank you.

24 Ms. Stewart, I think you raised your hand about too
25 many lawsuits, and I don't think that's an uncommon view. But

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1 you didn't raise your hand when asked whether there were too
2 many lawsuits about banks. And so could you explain to us
3 why -- you know, why you view too many lawsuits, but why you
4 don't think there's too many against banks?

5 PROSPECTIVE JUROR NO. 15: I honestly don't know of
6 many towards banks.

7 MR. SOLA: What types of lawsuits do you think should
8 not be filed?

9 PROSPECTIVE JUROR NO. 15: When there's no damage to
10 anything, when it's just more like a personal -- people having
11 issues with other people or they think they're owed a right to
12 something when they're not.

13 MR. SOLA: So personal, like there might be a
14 personal dispute between neighbors or between people and one
15 of them just says, "I'm going to sue you," just to make it
16 really hard for that other person?

17 PROSPECTIVE JUROR NO. 15: Yeah, yeah.

18 MR. SOLA: You don't think -- do you think there are
19 too many lawsuits by people or consumers against businesses?

20 PROSPECTIVE JUROR NO. 15: Yes.

21 MR. SOLA: So you think there are too many lawsuits
22 by consumers against businesses?

23 PROSPECTIVE JUROR NO. 15: I think they see an easy
24 mark and they go for it.

25 MR. SOLA: Okay. Because this is a case about a

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1 consumer suing a business here, and it sounds like you have a
2 strong feeling that those kind of lawsuits are often not
3 valid.

4 PROSPECTIVE JUROR NO. 15: Yeah.

5 MR. SOLA: So would you agree, it would be hard for
6 you to fairly judge a lawsuit of a consumer against a
7 business?

8 PROSPECTIVE JUROR NO. 15: Possibly.

9 MR. SOLA: Possibly you could not be fair; is that
10 true?

11 PROSPECTIVE JUROR NO. 15: Yeah.

12 MR. SOLA: We just want to know. We all want a fair
13 jury here. I don't mean to pry.

14 All right. Ms. Burson, I just wanted to know about
15 the case -- I'm sorry.

16 You were on a civil jury. So could you tell us what
17 that case involved?

18 PROSPECTIVE JUROR NO. 17: Yeah. It was
19 paratroopers, whatever, para -- landing in a farmer's crop of
20 trees and breaking off the tops. That's what it was.

21 MR. SOLA: And what was your view of that claim?

22 PROSPECTIVE JUROR NO. 17: It was pretty confusing,
23 because I don't know anything about crops of trees or, you
24 know, whatever they do from airplanes in the sky, but it did
25 break off the trees and it did harm the farmer's crop. But,

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1 again, when you fall out of a plane, can you really keep
2 yourself from the farmer's crops? It was right next to the
3 place where they land. So it turned out okay.

4 MR. SOLA: Did that leave you with any impression as
5 to whether plaintiffs are making claims that they should not
6 make?

7 PROSPECTIVE JUROR NO. 17: No, no, no.

8 MR. SOLA: Just another question, not to pry, but
9 part of our claims do involve Mr. Sponer's relationship with
10 his family and especially one of his children.

11 And who here has children?

12 Most of you.

13 Could you leave your hands up?

14 Okay. So we have Jurors 2, 3, 7, 8, 9, 10, 14, 16,
15 17, 18, 19, and I don't know these two numbers back there.

16 All right. Thank you.

17 That's all the questions I have.

18 THE COURT: Follow-up questions for the defense?

19 MR. PETERSON: Thank you, Your Honor.

20 Several of you raised your hands about being victims
21 of identity theft. So if you could raise your hands again,
22 and leave them raised for a moment.

23 Thank you. You can put them down.

24 Ms. Huss, what were the circumstances of when you
25 were a victim of identity theft?

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1 PROSPECTIVE JUROR NO. 8: I have no idea how they got
2 my identity. They actually opened up some credit cards in my
3 name. I didn't have any trouble whatsoever with the credit
4 card companies. My difficulty was with the State of Oregon
5 and my ID number.

6 MR. PETERSON: And what was that difficulty with the
7 State of Oregon?

8 PROSPECTIVE JUROR NO. 8: I wanted a new ID number,
9 and they did not want to give me one. They say they never do
10 that. So I had to get police reports. I had to get credit
11 reports. Everybody was very helpful except for DMV.

12 MR. PETERSON: Did you feel that that request to have
13 you provide more information was unreasonable by the State?

14 PROSPECTIVE JUROR NO. 8: Not unreasonable. I just
15 felt like at least the worker that I was directly in contact
16 with was very resistant to helping me.

17 MR. PETERSON: Thank you.

18 And, Mr. Wiggins, same question. Can you describe
19 the circumstances of when your identity was stolen?

20 PROSPECTIVE JUROR NO. 11: Someone filed a tax
21 return, a joint tax return, me and a Jamie Young, where they
22 would get a \$7,000 tax refund. I never heard of Jamie Young.
23 I wasn't getting a tax return that year.

24 And the IRS handled it very nicely. They gave me a
25 PIN number. And every time I file my taxes now, I have never

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1 had anything happen since.

2 MR. PETERSON: When was that?

3 PROSPECTIVE JUROR NO. 11: I think it was
4 probably -- probably about five years ago.

5 MR. PETERSON: Thank you.

6 Mr. Griffin, you also mentioned you had your identity
7 stolen? Oh, you did not?

8 PROSPECTIVE JUROR NO. 12: No.

9 MR. PETERSON: I apologize.

10 Ms. Flye Fairman, thank you. You mentioned you had
11 your identity stolen?

12 PROSPECTIVE JUROR NO. 13: Yeah. Probably like 2003,
13 2004, I was contacted because someone was using my -- a number
14 associated with my debit card at a gas station in a state
15 several states over. And it was wrapped up quickly, and no
16 real issues.

17 MR. PETERSON: And did you contact the company?

18 PROSPECTIVE JUROR NO. 13: The bank, yeah.

19 MR. PETERSON: Did they request any additional
20 information from you?

21 PROSPECTIVE JUROR NO. 13: Not that I recall. It was
22 pretty apparent that I couldn't have made a purchase across
23 the country, so --

24 MR. PETERSON: Thank you.

25 And, Mr. Murphy, you mentioned you had your identity

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1 stolen?

2 PROSPECTIVE JUROR NO. 16: Yes. It was like hers,
3 where it got marked and somebody bought something on my card in
4 Boston. And the credit card -- or U.S. Bank e-mailed me and
5 said, "Hey, this is going on." So I went in, they sat me
6 down, talked for a little bit, cancelled everything and got it
7 up and regoing.

8 MR. PETERSON: Do you have any idea how the thief got
9 your information?

10 PROSPECTIVE JUROR NO. 16: No idea. I've never been
11 that far away from home.

12 MR. PETERSON: And there were a couple over here, I
13 believe Mr. Joseph.

14 Mr. Joseph, what were the circumstances of having
15 your identity stolen?

16 PROSPECTIVE JUROR NO. 19: A bank I was banking with,
17 somebody opened up some credit cards under my name.

18 MR. PETERSON: What bank was that?

19 PROSPECTIVE JUROR NO. 19: U.S. Bank.

20 MR. PETERSON: And was that matter resolved?

21 PROSPECTIVE JUROR NO. 19: It was resolved. The
22 matter happened in the early 2000s, but it took a while for it
23 to be resolved?

24 MR. PETERSON: A year?

25 PROSPECTIVE JUROR NO. 19: Probably about a half a

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1 year, six months, six to eight months.

2 MR. PETERSON: And did they require you to provide
3 information?

4 PROSPECTIVE JUROR NO. 19: I did, yes. I had to give
5 proof of identity, Social Security. Then we had to go through
6 the major credit agencies.

7 MR. PETERSON: And under the circumstances, did you
8 have a belief that it was unreasonable for the bank to request
9 that type of information from you?

10 PROSPECTIVE JUROR NO. 19: No.

11 MR. PETERSON: Thank you.

12 And I believe Mr. Pierce; is that correct?

13 Same question, Mr. Pierce. What were the
14 circumstances of the identity theft?

15 PROSPECTIVE JUROR NO. 24: Well, I guess I've been
16 fortunate that it's happened more than once, so --

17 MR. PETERSON: One of the lucky ones.

18 PROSPECTIVE JUROR NO. 24: Pretty much. For the most
19 part, like everybody here, got a notification that a card was
20 used in a strange location, once in California, once was in
21 Florida. We did trace it back to an ATM machine, though, that
22 had a skimmer on it.

23 MR. PETERSON: And were those resolved?

24 PROSPECTIVE JUROR NO. 24: Yeah. Typically they were
25 resolved within a day or two.

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1 MR. PETERSON: Thanks.

2 Just a couple more questions.

3 Mr. Rudolph, you mentioned that you have a
4 preconceived negative opinion of Wells Fargo. What is the
5 basis for that?

6 PROSPECTIVE JUROR NO. 9: I would say it's probably
7 most big banks, and it has to do more with from my business
8 side and lending. There's so much fine print that catches
9 people in situations that they're unaware of, that I find that
10 most the time fine print is a spot to do that.

11 MR. PETERSON: And so you're -- have you had better
12 or your customers had better experiences with smaller banks?

13 PROSPECTIVE JUROR NO. 9: I would say the customer
14 service has typically been better at the smaller banks.

15 MR. PETERSON: And you were mentioning the small
16 print issue and that sort of thing. Have you had that issue
17 specific to Wells Fargo with customers or clients of yours?

18 PROSPECTIVE JUROR NO. 9: Yes.

19 MR. PETERSON: Thank you.

20 And Mr. Joseph. Mr. Joseph, you also mentioned that
21 you have -- I think you said a strong negative opinion of
22 Wells Fargo. What is the basis for that negative opinion?

23 PROSPECTIVE JUROR NO. 19: In the early 2000s I
24 roomed with somebody who was a client of Wells Fargo Bank, and
25 I had to watch him go through also identity theft and issues

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1 with his bank account that made my life difficult, because we
2 couldn't get the rent paid.

3 And then, also, in 2008, 2009, following the
4 mortgage-backed security rollovers and the downturn in the
5 economy, I really educated myself in how big banks do
6 business. So that's where my negative opinion comes with big
7 banks.

8 MR. PETERSON: Thank you.

9 I don't have any further questions.

10 THE COURT: Thank you.

11 Does the plaintiff have any challenges for cause?

12 MR. SOLA: Yes, we do, Your Honor. Do we do those
13 privately or --

14 THE COURT: No. You can do it right now.

15 MR. SOLA: Yes. We challenge Ms. Stewart for cause.

16 THE COURT: Thank you.

17 Ms. Stewart, you are excused. Thank you for your
18 service.

19 Do you have any further challenges for cause?

20 MR. SOLA: No, Your Honor.

21 THE COURT: You're passing the rest of the panel?

22 MR. SOLA: As far as cause, Your Honor, yes.

23 THE COURT: Correct. I'm sorry. For cause, yes.
24 Challenges for cause?

25 MR. PETERSON: Yes, Your Honor, Juror No. 7.

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1 THE COURT: I'm sorry. I don't know the basis of
2 that challenge.

3 MR. PETERSON: Clear bias against Wells Fargo based
4 on his business dealings with them.

5 THE COURT: Your challenge is denied.
6 Anybody else?

7 MR. PETERSON: No, Your Honor.

8 THE COURT: Thank you.

9 You may exercise your peremptory challenges.
10 Jennifer will be at your table in just a moment.

11 MR. SOLA: Your Honor, just as a matter of procedure,
12 can we pass and still have our peremptory?

13 THE COURT: No.

14 Members of the jury, this is a portion of the process
15 where we all look at each other and wonder what's going on.
16 And this is a good opportunity -- while we tell you to turn
17 your cell phones off, I'm going to let you turn them on, with
18 a couple caveats. If you want to respond to e-mails and text
19 messages and those kinds of things, feel free to do so. The
20 caveat is I don't want you doing anything that communicates
21 anything about this case to anybody.

22 So don't text, "Yeah, this is what I'm doing. I'm in
23 the court right now." Don't do anything like that. But if
24 you need to respond to an e-mail or send a message to somebody
25 saying you might be tied up for a while, you can do that right

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1 now. No phone calls, but if you need to message somebody, go
2 ahead and do so while we're just kind of staring at each
3 other.

4 Also, please don't get on the Internet and try to
5 research anything about this case or anybody connected with
6 this case.

7 (There is a brief pause in the proceedings.)

8 MR. SOLA: All right. We're ready.

9 (The challenges are taken.)

10 THE COURT: Would you make sure your microphones are
11 off at your tables, please.

12 (The challenges are taken.)

13 THE COURT: So, members of the jury, we're just about
14 there, for those of you who turned your cell phones on, to
15 turn them off at this time.

16 Thank you.

17 Members of the jury, I'm going to read some names.
18 If I read your name, please stand up.

19 Lynn Osterkamp, Dianne Horner, Angela Huss, Corey
20 Rudolph, Kristin Walrod, Joseph Wiggins, Rayna Flye Fairman,
21 Brian Kragt. There should be eight of you.

22 Please raise a hand and be sworn.

23 (The jury is then sworn.)

24 THE COURT: Thank you. You are our jury. Please be
25 seated.

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1 As for everybody who did not stand up and take an
2 oath, you are excused. Thank you very much for your service.
3 It is appreciated. You are free to go. Thank you very much.

4 (The remaining prospective jurors leave the
5 courtroom.)

6 THE COURT: You can stay in the front row. The idea
7 is to get you as close as possible to the witnesses who will
8 be testifying. That's why we move everybody down.

9 Members of the jury, we're going to take our morning
10 recess at this time. We'll be in recess for about 15 minutes.

11 After the recess, I will bring you back and I'll give
12 you your preliminary instructions that kind of tells you how
13 to listen to the evidence and decide the case and those kinds
14 of things. More instructions will come at the end of the
15 trial, but really just kind of giving a foreshadowing of
16 what's going to happen and your job and duties as a juror.

17 While you're in the jury room and taking your break,
18 please do not discuss the case amongst yourselves, communicate
19 anything about the case with anybody outside, do any research
20 into any law connected with the case, do any research about
21 any of the individuals involved in this case. Don't use your
22 devices in order to gather any information from an outside
23 source about anything to do with this case.

24 By the time I'm done with the instructions, you will
25 hear that admonishment I don't know how many times. You will

Preliminary Instructions

1 be very sick of it by the time we're over, but it's really
2 important that you not seek out information from any outside
3 sources.

4 With that, I'm going to let you take a break. We'll
5 be in recess for 15 minutes. We'll come back and then we'll
6 get started.

7 Thank you. Take 15.

8 (A recess is then taken.)

9 (The Court, counsel, and the parties reconvene.)

10 THE COURT: Go get them, Jen.

11 (The jury enters the courtroom.)

12 THE COURT: Go ahead and be seated.

13 Be seated.

14 Ladies and gentlemen of the jury, you are now the
15 jury in this case, and I want to take a few minutes to tell
16 you something about your duties as jurors and to give you some
17 instructions. At the end of the trial I will give you more
18 detailed instructions. Those instructions will control your
19 deliberations.

20 It will be your duty to decide what the facts are
21 from the evidence. You, and you alone, are the judges of the
22 facts. You will hear the evidence, decide the facts, and then
23 apply those facts to the law I will give you; and that is how
24 you will reach your verdict. In doing so, you must follow the
25 law, whether you agree with it or not.

Preliminary Instructions

1 The evidence will consist of the testimony of
2 witnesses, documents and other things received into evidence
3 as exhibits, and any facts on which the lawyers agree or which
4 I instruct you to accept.

5 You should not take anything I say or do during the
6 trial as indicating what I think of the evidence or what your
7 verdict should be.

8 The following things are not evidence, and you must
9 not consider them as evidence in deciding the facts of this
10 case: one, statements and arguments by the attorneys; two,
11 questions and objections of the attorneys; three, testimony
12 that I told you to disregard; and, four, anything you may have
13 seen or heard when the court is not in session.

14 Do not communicate any private or special knowledge
15 about any of the facts of this particular case to your fellow
16 jurors. Decide the case only on the evidence received here in
17 court.

18 Some evidence may be admitted for a limited purpose.
19 When I instruct you that some evidence is admitted for a
20 limited purpose, you must consider it only for that limited
21 purpose.

22 Evidence may be direct or circumstantial. Direct
23 evidence is evidence about -- or, excuse me, by a witness
24 about what that witness personally saw or heard or did.
25 Circumstantial evidence is indirect evidence; that is, it is

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1 proof of one or more facts from which one can find another
2 fact.

3 You are to consider both direct and circumstantial
4 evidence. The law permits you to give equal weight to both,
5 but it is for you to decide how much weight to give to any
6 evidence.

7 There are rules of evidence which control what can be
8 received into evidence. When a lawyer asks a question or
9 offers an exhibit into evidence and the lawyer on the other
10 side thinks it is not permitted by the rules of evidence, that
11 lawyer may object. If I overrule an objection, the question
12 may be answered or the exhibit received. If I sustain an
13 objection, the question cannot be answered and the exhibit
14 cannot be received. Whenever I sustain an objection to a
15 question, ignore the question and do not guess what the answer
16 might have been.

17 Sometimes I may order that evidence be stricken from
18 the record and that you disregard or ignore the evidence.
19 That means that when you're deciding the case, you must not
20 consider the evidence which I told you to disregard.

21 In deciding the facts of this case, you may decide
22 which testimony to believe and which testimony not to believe.
23 You may believe everything a witness says or part of it or
24 some of it or none of it.

25 In considering the testimony of any witness you may

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1 take into account the opportunity and ability of the witness
2 to see or hear or know the things testified to, the witness's
3 memory, the witness's manner while testifying, the witness's
4 interest in the outcome of the case and any bias or prejudice,
5 whether other evidence contradicted the witness's testimony,
6 the reasonableness of the witness's testimony in light of all
7 the evidence, and any other factors that bear on
8 believability.

9 The weight of the evidence as to a fact does not
10 necessarily depend on the number of witnesses who testify.
11 You are to weigh the evidence, not simply count the witnesses.

12 You will be allowed to propose written questions to
13 witnesses after the lawyers have completed their questioning
14 of each witness. You may propose questions in order to
15 clarify the testimony, but you are not to express any opinion
16 about the testimony or argue with the witness. If you propose
17 any questions, remember that your role is that of a neutral
18 factfinder, not an advocate.

19 Before I excuse each witness, I will offer you the
20 opportunity to write out a question on a form provided by the
21 Court, which is actually a piece of paper on your notebook
22 which I provided to you. Do not sign the question. I will
23 review the question with the lawyers to determine if it is
24 legally proper.

25 There are some proposed questions that I will not

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1 permit and will not ask in the wording submitted by the juror.
2 This might happen either due to the rules of evidence or other
3 legal reasons or because the question is expected to be
4 answered later in the case. If I do not ask a proposed
5 question or if I rephrase it, do not speculate as to the
6 reasons.

7 Do not give undue weight to questions you or other
8 jurors propose. You should evaluate the answers to those
9 questions in the same manner you evaluate all of the other
10 evidence.

11 By giving you the opportunity to propose questions,
12 I'm not requesting or suggesting that you should do so. It
13 will often be the case that the lawyer has not asked a
14 question because it is legally objectionable or because a
15 later witness may be addressing that subject.

16 From time to time during the trial it may become
17 necessary for me to talk with the attorneys out of the hearing
18 of the jury, either by having a conference at the bench when
19 the jury is present in the courtroom or by calling a recess.
20 Please understand that while you're waiting, we are working.
21 The purpose of these conferences is not to keep relevant
22 information from you, but to decide how certain evidence is to
23 be treated under the rules of evidence and to avoid confusion
24 and error.

25 We will, of course, do what we can to keep the number

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1 and length of these conferences to a minimum. And I may not
2 always grant an attorney's request for a conference. Do not
3 consider my granting or denying a request for a conference as
4 any indication of my opinion of the case or what your verdict
5 should be.

6 I will now say a few words about your conduct as
7 jurors.

8 First, keep an open mind throughout the trial. Do
9 not decide what the verdict should be until you and your
10 fellow jurors have completed your deliberations at the end of
11 the case.

12 Second, because you must decide the case only on the
13 evidence received in the case and on my instructions as to the
14 law that applies, you must not be exposed to any other
15 information about the case or to the issues it involves during
16 the course of your jury duty.

17 Thus, until the end of the case or until I tell you
18 otherwise, do not communicate with anyone in any way and do
19 not let anyone else communicate with you in any way about the
20 merits of the case or anything to do with it.

21 This includes discussing the case in person, in
22 writing, by phone or electronic means, via e-mail, text
23 message, or any Internet chat room, blog, website, or other
24 feature.

25 This applies to communicating with your fellow jurors

Preliminary Instructions

1 until I give you the case for deliberation, and it applies
2 with -- or applies to communicating with everyone else,
3 including your family members, your employer, the media or
4 press, and the people involved in the trial, although you may
5 notify your family and your employer that you've been seated
6 as a juror in the case. But if you are asked or approached in
7 any way about your jury service or anything to do about this
8 case, you must respond that you've been ordered not to discuss
9 the matter and then you should report that contact to the
10 Court.

11 Because you will receive all the evidence and legal
12 instruction you properly may consider to return a verdict, do
13 not read, watch, or listen to any news or media accounts or
14 commentary about the case or anything to do with it. Do not
15 do any research, such as consulting dictionaries or searching
16 the Internet or using other reference materials. Do not make
17 any investigation or in any other way try to learn about the
18 case on your own.

19 The law requires these instructions to ensure the
20 parties have a fair trial based on the same evidence that each
21 party has had an opportunity to address. A juror who violates
22 these restrictions jeopardizes the fairness of the
23 proceedings. If any juror is exposed to any outside
24 information, please notify the Court immediately.

25 At the end of the trial you'll have to make your

Preliminary Instructions

1 decision based on what you recall of the evidence. Although
2 you will have all the admitted exhibits with you in the jury
3 room, you will not have a written transcript to refer to, so I
4 urge you to pay close attention to testimony as it's given.

5 If you wish, you may take notes to help you remember
6 what witnesses said. If you do take notes, please keep them
7 to yourself until you and your fellow jurors go to the jury
8 room to decide the case. Do not let your note-taking distract
9 you from hearing other answers or watching the witnesses.
10 It's important that you watch the witnesses as their
11 appearance may assist you in deciding whether you believe
12 their testimony and how much weight you give their testimony.
13 When you leave in the evening, your notes should be left in
14 the jury room.

15 If you do not take notes, you should rely on your own
16 memory of what was said and not be overly influenced by the
17 notes of other jurors.

18 If at any time you cannot clearly hear a witness or
19 lawyer or cannot see any documents that are presented on the
20 evidence presentation system, please speak up and alert the
21 Court to the problem.

22 If you need to communicate with me, simply give a
23 signed note to Jennifer, the bailiff, and she will give it to
24 me.

25 The trial is about to begin. Each side may make an

Opening Statement - Plaintiff

1 opening statement. An opening statement is not evidence. It
2 is simply an outline to help you understand what the party
3 expects the evidence will show. By the way, a party is not
4 required to make an opening statement.

5 The plaintiff will then present his evidence, and
6 counsel for the defendant may cross-examine. Following the
7 plaintiff's case, the defendant may present evidence and the
8 plaintiff's counsel may cross-examine.

9 After all the evidence has been presented, the
10 lawyers will make closing arguments to summarize and interpret
11 the evidence for you. I will then instruct you on the law.
12 And after that, you will retire to deliberate on your verdict.

13 Opening statement for the plaintiff.

14 MR. SOLA: Your Honor, my assistant, Adam Wolf, is it
15 okay if he comes up and sits at counsel table?

16 THE COURT: Of course, of course.

17 He's your IT person?

18 MR. SOLA: Yes, and a recent law school graduate.

19 THE COURT: Congratulations and welcome, and make
20 yourself at home.

21 MR. SOLA: Thank you, Your Honor.

22 Thank you, ladies and gentlemen. I am Robert Sola,
23 and my co-counsel is Jeff Sand. We are proud to represent
24 Matthew Sponer, who has brought this case against Wells Fargo
25 Bank. We are here today because Wells Fargo broke the law,

Opening Statement - Plaintiff

1 not once, not twice, but many times.

2 That law is the Fair Credit Reporting Act. That's a
3 mouthful, so I'll often use the term "FCRA." That's the law
4 that governs this case, and that FCRA governs the credit
5 reporting industry. Wells Fargo is a gigantic bank, plays a
6 large role in that industry. It provides credit information
7 to the credit reporting agencies; and, therefore, Wells Fargo,
8 in FCRA or credit industry jargon, is called a furnisher,
9 because they furnish information.

10 We are here to hold Wells Fargo accountable for its
11 illegal conduct.

12 Now, Matthew Sponer is a victim of identity theft.
13 He is also a 20-year customer of Wells Fargo. In July 2016
14 Wells Fargo gave a car loan to an identity thief who was using
15 Mr. Sponer's identity. Wells Fargo then reported that
16 fraudulent account to the credit reporting agencies, and it
17 appeared on Mr. Sponer's credit reports. The loan was for
18 more than \$29,000.

19 A few months after the theft, the police caught the
20 thief, and the police tell Wells Fargo that the car loan was
21 the result of the theft of Mr. Sponer's identity and they say
22 they've caught the thief. They tell Wells Fargo that the car
23 is being held as evidence for the criminal case against the
24 thief.

25 Mr. Sponer sends disputes about that account to the

Opening Statement - Plaintiff

1 credit reporting agencies and to Wells Fargo. More than 10
2 times he disputes, but Wells Fargo does not remove the
3 account, not for more than 14 months, and only after
4 Mr. Sponer sues Wells Fargo. Wells Fargo kept insisting the
5 debt was his.

6 Our claim is that Wells Fargo violated the Fair
7 Credit Reporting Act, a law designed to ensure the accuracy of
8 information on credit reports, which are an essential
9 component in our credit-based economy.

10 You will hear our witnesses discuss the various uses
11 of credit reports and how the FCRA has been amended to make
12 sure that furnishers report accurate information and correct
13 inaccurate information that is disputed. Mr. Sponer is
14 entitled to the protections of the FCRA.

15 Now, my first chart I want to show you is called
16 "Building a Credit Report."

17 Just put the whole thing up.

18 What you start with is the furnisher. Okay. They
19 have the data. The furnishers are banks, loan companies,
20 collection agencies, anybody who has credit information. They
21 then report that information to the credit reporting agency,
22 sometimes referred to as a consumer reporting agency, but
23 often I will use the phrase "CRA."

24 Then the CRAs take that information from the
25 furnisher and they turn it into an individual credit report

Opening Statement - Plaintiff

1 for an individual consumer.

2 Now, my next chart is the dispute mechanism. And the
3 mechanism begins with a consumer who sees their credit report
4 or otherwise learns they have an error on their report. They
5 then dispute the information to the credit reporting agency.
6 All consumers have a right to make a dispute, and all
7 consumers have a right to have that dispute investigated under
8 the terms of the FCRA, which I will discuss.

9 They make the dispute to a credit reporting agency,
10 and then a credit reporting agency goes back to the furnisher,
11 the source of the information, and asks the furnisher, "Is the
12 information accurate?" Whatever the dispute is, the CRA will
13 tell the furnisher if it's identity theft, if it's that the
14 account was not late -- whatever the consumer has said, the
15 credit reporting agency will tell the furnisher and ask them
16 to investigate and respond as to whether the information is
17 accurate.

18 So the furnisher then is supposed to do an
19 investigation and respond. They respond to the CRA. And then
20 based on the furnisher's response, the CRA sends results of
21 the dispute back to the consumer. And you can have two
22 outcomes. You can have a consumer who gets the error
23 corrected, then they're happy; and you can have a consumer
24 whose error is not corrected, and they would be unhappy.

25 Now, Mr. Sponer's claim is for violation of one

Opening Statement - Plaintiff

1 section of the FCRA. We call it s-2(b). I'll try not to use
2 too much legal jargon here, but I may slip into saying
3 "s-2(b)" or "furnisher duties." And Section s-2(b) sets forth
4 the requirements that Wells Fargo must comply with after
5 receiving a notice of a dispute from the CRA.

6 And so if you could put up -- this is the text of
7 s-2(b). It may be hard to read. But the key point is after
8 the furnisher gets that notice from the CRA of the dispute,
9 they must conduct an investigation. That's the first line
10 below the big paragraph. They must conduct an investigation.

11 And I believe the Court will inform you at the end of
12 the case in his jury instructions that that investigation must
13 be reasonable, not superficial, not cursory, but a true, real
14 investigation to determine if the information is accurate,
15 because that's the purpose of this section of the Fair Credit
16 Reporting Act, to assure accuracy and to get inaccurate
17 information that's disputed corrected. And that's why the law
18 requires Wells Fargo to do an investigation and make sure the
19 information that it reports is accurate. But the evidence
20 will show that Wells Fargo's procedures do not ensure that
21 inaccurate information gets investigated and corrected.

22 Matthew Sponer lives here in Portland with his wife,
23 Ana, and his two daughters, Zelda and Farah.

24 He is a computer programmer. He has always been
25 interested in programming. Several years ago he joined a

Opening Statement - Plaintiff

1 company that was just starting up. He got a 5 percent share
2 of that company and worked very hard to make it successful.

3 Later that hard work paid off. The company was sold,
4 and he got a small share of the sale price. He felt he had
5 been working too much, and he wanted to take some time off.
6 And because he had two children, he also thought, "This is a
7 great time to spend with my children, before they grow up and
8 leave home."

9 He and his wife always had a dream of sailing, taking
10 a long sailing trip, and they realized this was the chance for
11 them to pursue that dream. And so they bought a sailboat and
12 they started on a once-in-a-lifetime trip with their children.

13 But Mr. Sponer had an extra reason to take that
14 family vacation. One of his daughters, Farah, has a profound
15 intellectual disability. She cannot talk. She can't walk
16 without assistance. So she connects with people through being
17 close with them and touching them and sharing moments with
18 them. She's a very social and loving person, and she loves
19 her father. But the only way for her to share her love and
20 socialize with her father is to spend time, a lot of time,
21 with him and to be next to him. The family sailing trip was a
22 perfect opportunity and a wonderful way to get her social
23 needs met and for their special relationship to grow.

24 Now, before Mr. Sponer leaves for his vacation, he
25 does the right thing. He contacts Wells Fargo, because they

Opening Statement - Plaintiff

1 have his credit card, and he tells them that he's going to be
2 out of the country for at least a year. But nine months
3 later, Wells Fargo allows a thief to get a car loan with Wells
4 Fargo using Mr. Sponer's name.

5 In October 2016 the police catch the thief.
6 Mr. Sponer learns about the identity theft through his
7 brother, who has been contacted by the Chula Vista Police
8 Department, who are looking for Mr. Sponer because they know
9 he's a victim. They've caught the thief.

10 And then Mr. Sponer, since he's on his vacation, he
11 contacts an attorney that he happened to know to assist him in
12 dealing with the identity theft.

13 On October 19, 2016, this attorney, James Charne,
14 faxes a letter to Wells Fargo. He tells Wells Fargo that
15 Mr. Sponer is the victim of identity theft in regard to this
16 car loan with Wells Fargo. He says that the police, Police
17 Detective Tugashov, told him that the perpetrator has been
18 caught and that he is now in custody and that the automobile
19 has been recovered and Wells Fargo will get that automobile
20 back.

21 The letter states that Detective Tugashov can confirm
22 all this information. And it also makes a request. He
23 requests that if any negative information about
24 Mr. Sponer -- well, he first requests that any negative
25 information about this loan not be reported to the credit

Opening Statement - Plaintiff

1 reporting agencies, and if it has already been reported, that
2 it be corrected.

3 A week later, on October 26th, Wells Fargo speaks
4 with Police Detective Tugashov about the theft of Mr. Sponer's
5 identity for the car loan. And Wells Fargo makes a record of
6 that call in their own account notes that they maintain.

7 And here's an excerpt from that record that Wells
8 Fargo made of that call with the police. And it says, "Spoke
9 with Detective Tugashov. He stated that they are
10 investigating this as fraud. Unit was purchased by Jason
11 Yochum 10-4-79, after he stole customer's identity. Unit will
12 be held until 11-1 for investigation and will be released to
13 us then with no fees. Customer attorney is Jim Charne."

14 Look at those words from the police, from Detective
15 Tugashov: "The unit was purchased by Jason Yochum after he
16 stole customer's identity." The police confirm to Wells Fargo
17 that the loan was the result of identity theft. As of
18 October 26th, 2016, Wells Fargo knew this loan did not belong
19 to Mr. Sponer, yet it tells the credit reporting agencies over
20 and over that it is Mr. Sponer's loan. Each time, Mr. Sponer
21 disputes it.

22 But Wells Fargo learns even more about the theft. A
23 few days later, on November 3rd, they have another
24 conversation with Detective Tugashov, again recorded in Wells
25 Fargo's notes of the car loan. And those notes show exactly

Opening Statement - Plaintiff

1 what Wells Fargo was told by the police: "Suspect pled
2 guilty. Sentencing is on November 30th. And between now and
3 then suspect can change their mind. And, if so, the car would
4 have to be kept as evidence for trial."

5 The suspect has pled guilty to stealing Mr. Sponer's
6 identity. The car is being held as evidence. If you are a
7 bank, like Wells Fargo, you really cannot have better proof of
8 identity theft than the police telling you it was identity
9 theft, telling you the suspect pled guilty to the crime, and
10 that the police are holding the car as evidence in the
11 prosecution.

12 Wells Fargo has all this information in its records
13 when Mr. Sponer disputes the account over the next 14 months.
14 But, as you will see, Wells Fargo ignores the information and
15 keeps insisting that that is his.

16 Now, Mr. Sponer is a 20-year customer of Wells Fargo.
17 He has a Wells Fargo credit card and other accounts. Wells
18 Fargo knows who Mr. Sponer is and that he is claiming the
19 account is fraud, but they won't fix his credit report and
20 agree the debt is not his.

21 At the same time that Mr. Charne has notified Wells
22 Fargo about the identity theft, he's notifying the credit
23 reporting agencies. Those credit reporting agencies then
24 notify Wells Fargo of Mr. Sponer's dispute through that
25 process we just looked at.

Opening Statement - Plaintiff

1 This is where Wells Fargo's duties to investigate the
2 dispute under the FCRA arise. The dispute notice from the
3 CRAs to Wells Fargo is called an an Automated Consumer Dispute
4 Verification form. That's a mouthful. I'm going to refer to
5 that as an ACDV. It's sent electronically.

6 When you hear those words, "ACDV," that's the notice
7 from the CRA to Wells Fargo that the consumer is disputing.
8 That's the notice that requires that Wells Fargo do a
9 reasonable investigation of the dispute in order to comply
10 with the FCRA.

11 Wells Fargo gets an ACDV in 2016 and then they must
12 investigate. They do. They respond to the ACDV. They don't
13 investigate, but they do respond to the ACDV. But instead of
14 telling the CRAs to delete the account, they tell the CRAs the
15 information is accurate, even though they know from the police
16 that it's identity theft. So the fraudulent account stays on
17 Mr. Sponer's credit report.

18 We'll look at some of these ACDVs in a few minutes.

19 Our next exhibit is Exhibit 5. And there are a lot
20 of documents in this case, and that's essentially the nature
21 of a case like this. When there are many disputes and many
22 credit reports, those are the evidence we will be showing you.
23 So most of the evidence in our case are documents.

24 The TransUnion credit report from November 9th, 2016,
25 TransUnion is another credit reporting agency. And since

Opening Statement - Plaintiff

1 Wells Fargo has told the CRAs the information is accurate,
2 it's on this TransUnion report. You can see it right there.
3 It's called Wells Fargo Dealer Services. Just so you
4 understand, those words typically are with it, because that's
5 the auto loan division of Wells Fargo Bank, Wells Fargo Dealer
6 Services. Balance of \$29,419. Now it's reporting 60 days
7 late because, of course, the thief has not paid.

8 Our next exhibit is Exhibit 60. This is a notice --
9 Could you go to the second page? Yes.

10 This is a notice that TransUnion sends to Wells
11 Fargo, dated November 13, 2016, stating they have permanently
12 blocked this item from TransUnion's reports because it is
13 fraudulent. And the notice advises Wells Fargo to, quote,
14 take all the necessary steps to ensure that this account is
15 not reported by you or by a third party -- i.e., collection
16 agency -- in your behalf.

17 Wells Fargo does not investigate the account after
18 getting this notice, and it does not ensure that it does not
19 report the account. Just the opposite: It ensures that it
20 keeps reporting the account, and it also keeps telling the
21 CRAs that it belongs to Mr. Sponer, so it will stay on his
22 credit report.

23 Wells Fargo's records show that they keep talking to
24 the police through November and December about the criminal
25 case against the thief, but those records show that Wells

Opening Statement - Plaintiff

1 Fargo only wants to know when they can get the car back from
2 the police and "When is this criminal case going to finish so
3 we can get the car?" That's all they care about.

4 The records do not show that Wells Fargo has any
5 concern for the fact that it's reporting inaccurate
6 information on Mr. Sponer's credit report.

7 Wells Fargo gets another ACDV of Mr. Sponer -- with
8 Mr. Sponer's disputes in November of 2016 and again tells the
9 CRA that this \$29,000 debt is his.

10 Mr. Sponer will testify that he sees the Wells Fargo
11 is still on his report, despite the disputes, and that Wells
12 Fargo is still insisting he owes \$29,000. He worries Wells
13 Fargo will cancel his credit card. He's now on his trip and
14 in New Zealand, and that's the card he's using for the family
15 expenses. If they cancel it, he'll basically be without
16 money, or he worries that Wells Fargo will just take the money
17 out of one of his other accounts or that they will sue him.

18 The family is in New Zealand, but they have to change
19 their plans to travel around the country so they can deal with
20 this identity theft.

21 Now, there were other fraudulent accounts. To be
22 clear, it's not just Wells Fargo. There were other fraudulent
23 accounts on his file by November of 2016. So he rents an
24 office, because in New Zealand there's not really good
25 Internet. So he rents an office in a town so he can get

Opening Statement - Plaintiff

1 Internet, so he can research what to do and how to fix this
2 problem.

3 He's going into that office almost every day. And
4 it's very hard for him because he's away from Farah, his
5 daughter with the disability. And you'll hear his mother
6 testify about this time apart and how it caused him and Farah
7 to suffer.

8 In January 2017 Wells Fargo gets the car back because
9 the identity theft case is completed, but they keep reporting
10 the account as if it belongs to Mr. Sponer. Because Wells
11 Fargo has not deleted the account by January 2017, he writes a
12 dispute letter to Wells Fargo. That is Exhibit 11.

13 Mr. Sponer sends Wells Fargo this letter, saying he's
14 the victim of identity theft. And you'll have a chance to
15 review this later. He encloses the police report that
16 mentions him as the victim of identity theft, because the
17 police had prepared a large report on this crime, because they
18 caught the guy.

19 Mr. Sponer includes a notarized Federal Trade
20 Commission identity theft victim's complaint and affidavit.
21 And in his dispute letter, he provides the name of the thief,
22 Jason Yochum, the San Diego criminal court case number, the
23 Chula Vista Police Department case number, and the Chula Vista
24 Police Department police report number. All this information
25 that Wells Fargo has now, mimicking information they actually

Opening Statement - Plaintiff

1 already got from Detective Tugashov.

2 But you will hear Mr. Sponer say that he sent a
3 similar letter with the police report and with the fraud
4 affidavit to the other creditors who also were reporting
5 fraudulent accounts. As a result, those other creditors took
6 the account off his credit report. But not Wells Fargo.

7 Next is Exhibit 12. This is Wells Fargo's response
8 to that January dispute letter. It's dated February 15, 2017,
9 and it states that it has verified that the information being
10 sent to the consumer credit reporting agencies on this account
11 is accurate. You will see that that is not true. And we know
12 it can't be true, because it's identity theft.

13 Wells Fargo also says, in the next paragraph, if he
14 has cancelled checks or receipts, to send those in. This
15 shows that Wells Fargo has not even read his letter. His
16 letter was a dispute of identity theft, with a police report
17 and a fraud affidavit. But Wells Fargo acts as if he's made
18 some kind of claim about a billing error. Mr. Sponer will
19 discuss how disappointed he is to get this response.

20 In February the family decides to come back to the
21 United States for two reasons: one, to deal more with the
22 identity theft, because it's not getting fixed by Wells Fargo;
23 and so his wife can donate a kidney to her brother.

24 Wells Fargo continues to report the account, but it
25 gets much worse. It becomes a charge-off, which means it's

Opening Statement - Plaintiff

1 written off, for \$29,000. You will hear testimony from our
2 witnesses that the status of charge-off is very derogatory.

3 Next we have Exhibit 13. In August 2017 Mr. Sponer
4 sends Wells Fargo another dispute. He adds even more
5 information so Wells Fargo knows that this is not his account.
6 He indicates how long he's been trying to get them to agree it
7 is not his and remove it from his credit report. He encloses
8 the February 15 response from Wells Fargo so they can see how
9 they had treated his prior dispute, and he encloses the police
10 report and the FTC affidavit. Wells Fargo does not even
11 respond to this letter.

12 Next we have Exhibit 15. Mr. Sponer writes again on
13 November 3rd, 2017. He again states that he's the victim of
14 identity theft. He asks Wells Fargo to remove this from his
15 credit files. He details all the previous correspondence.

16 You will hear him say he really didn't know what to
17 do. He's a computer programmer. He's not a financial credit
18 reporting expert. But he figures, "I'll give them everything
19 that happened, so if anybody gets this letter, they won't have
20 to look at anything else. They can look at this letter and
21 see what has happened already, all the previous disputes, all
22 the information that Mr. Charne gave." So he lays it all out
23 and he encloses a passport with his identification, the police
24 report, and the FDC affidavit.

25 Now, at the same time he's disputing with Wells

Opening Statement - Plaintiff

1 Fargo, he thinks, "I'll dispute with Equifax, too. That will
2 be another approach to get this fixed," because you saw under
3 the system of disputing, if he disputes with Equifax, they'll
4 notify Wells Fargo.

5 But let's go to Exhibit 18. This is Wells Fargo's
6 response to his November 3rd, 2017 letter. It's dated
7 November 21, and it says they received his documents but,
8 quote, Before we can proceed with our investigation, we will
9 need to receive a copy of your Social Security card.

10 Mr. Sponer will tell you he was incredulous to get
11 that. The language "Before we can proceed with the
12 investigation" means that they're not going to even read his
13 letter, they're not even going to investigate -- that's what
14 he hears -- because they don't have a Social Security card.
15 He will say that it made him feel like Wells Fargo was just
16 blowing him off. He could not see why they needed his Social
17 Security card to investigate if the account was identity
18 theft. They already had all the information showing it was
19 identity theft. He did not have his Social Security card.
20 But he was a 20-year customer of Wells Fargo with various
21 accounts. They knew who he was.

22 You will hear a Wells Fargo employee who sent this
23 letter, you will hear his testimony that it was sent because
24 that is Wells Fargo's policy. No matter what other
25 information Wells Fargo had showing it was identity theft,

Opening Statement - Plaintiff

1 they demand the Social Security card from a consumer to
2 proceed with an investigation. The evidence will show this is
3 a needless policy that just erects an unnecessary hurdle for
4 consumers who want to get their credit report corrected.

5 Wells Fargo receives more ACDVs from Equifax in
6 November, stating that Mr. Sponer is disputing it as identity
7 theft; and the evidence will show that Wells Fargo does not
8 conduct a reasonable investigation of those disputes nor does
9 it stop reporting the account. Wells Fargo responds to the
10 ACDVs by telling Equifax that the account belongs to
11 Mr. Sponer, so it stays on his report.

12 Exhibit 20, this is an example of one of the
13 responses that Mr. Sponer gets from Equifax. It's dated
14 November 30th. Now, if you look at the first page, Equifax
15 tells Mr. Sponer their procedure for investigating, and it's
16 the procedure that I showed you on the chart. They say the
17 procedure is to contact the company reporting the information
18 and ask it to verify its accuracy. Here that company is Wells
19 Fargo.

20 If we turn to page 3, we see the results. This has
21 been verified as belonging to him. If he has questions, go to
22 Wells Fargo, a place that he's already written many times.

23 He's now been disputing for more than one year, and
24 Wells Fargo has known for more than one year that the account
25 was the result of identity theft, but it will not remove it

Opening Statement - Plaintiff

1 and will not say this \$29,000 debt is not his. He worries
2 about that debt. It's a constant concern. \$29,000, a lot of
3 money, and he doesn't know if one day Wells Fargo will sue him
4 or try to get that money another way.

5 Next is Exhibit 22. Mr. Sponer sends a response to
6 Wells Fargo, another dispute, after he got the November 21
7 letter saying they needed his Social Security card to
8 investigate. And he states he does not have a copy of his
9 Social Security card. He states they have more than enough
10 information to investigate. And he points out all this other
11 information he has sent, not just about his identity, but
12 about the crime itself.

13 Next we have Wells Fargo's letter of December 5th.
14 Now Wells Fargo says it has forwarded his request -- there we
15 go. Thank you.

16 Wells Fargo says it has forwarded his request to the
17 Wells Fargo Dealer Services fraud department. Mr. Sponer will
18 testify he was really upset when he got this letter. He has
19 already been disputing with the fraud department for more than
20 one year and nothing is getting fixed. It's like going in
21 circles. All they're saying now is "We're going to give it to
22 the fraud department," where it's been for more than a year.

23 He continues disputing with Equifax, hoping that if
24 Equifax tells Wells Fargo about his dispute, that maybe
25 someone at Wells Fargo will tell Equifax to delete it. But he

Opening Statement - Plaintiff

1 gets more results from his disputes to Equifax on
2 December 6th. And, again, the results are "Wells Fargo
3 verified this belongs to you."

4 And if we look at Exhibit 26, he gets more results
5 from Equifax. Oh, I'm sorry. Exhibit 26 is a letter that
6 Wells Fargo sends to Mr. Sponer, right? I'm getting mixed up
7 here.

8 Exhibit 25, have we looked at that?

9 All right. And then Exhibit 26. Exhibit 26 is a
10 letter that Wells Fargo sends Mr. Sponer, dated December 14,
11 2017. It states that he may be the victim of identity theft.
12 I mean, it would almost be comical if it wasn't so serious,
13 that they're telling him something he has been telling them
14 for 14 months. It's like Wells Fargo has not seen or heard
15 any of the information he's provided, Mr. Charne has provided,
16 or the police have provided. But all that information is in
17 Wells Fargo's records.

18 The evidence will show that Wells Fargo ignores all
19 that information and keeps saying the account belongs to
20 Mr. Sponer. We're now 14 months since his first dispute. The
21 CRAs have sent 10 ACDVs notifying Wells Fargo of his dispute,
22 and TransUnion sent that fraud block notice, telling Wells
23 Fargo not to report it.

24 Mr. Sponer sees it's hopeless. He files this lawsuit
25 against Wells Fargo on December 22nd, 2017. But even after

Opening Statement - Plaintiff

1 that, if you show Exhibit 29, he gets results from Equifax
2 showing the account has, again, been verified by Wells Fargo
3 as his.

4 But the lawsuit finally does get Wells Fargo's
5 attention. About five weeks after the lawsuit, the legal
6 department gets involved. You will see the deposition of
7 Wells Fargo employee William Brady, who states that after the
8 legal department got involved, his manager came to him and
9 told him to validate the dispute as fraud. Wells Fargo only
10 takes it off his credit report because he sues them.

11 But for the past 15 months, he has worried about this
12 \$29,000 debt that Wells Fargo insists that he owed.

13 Now let's talk about Wells Fargo's investigations.
14 As you saw earlier, the FCRA requires that Wells Fargo conduct
15 a reasonable investigation of Mr. Sponer's dispute to
16 determine if the account resulted from identity theft. But
17 the evidence will show that Wells Fargo did not do a
18 reasonable investigation, not once.

19 Moreover, Wells Fargo's procedures do not even
20 require that a reasonable investigation be conducted and that
21 information that's inaccurate be corrected.

22 You will hear the deposition of Wells Fargo's
23 employees who actually processed those ACDVs that they got
24 from the credit reporting agencies. One of those employees is
25 Ashley Grier. And if you look at Exhibit 52, this is one of

Opening Statement - Plaintiff

1 the ACDVs she worked on.

2 Now, I know it looks pretty jumbled, and we will have
3 a witness to explain this ACDV form to you. But the key thing
4 is his dispute, at the top, is "claims true identity fraud."
5 And Ms. Grier will explain, she did not investigate whether
6 the account resulted from identity fraud. Instead, what she
7 did was compare the identifying information. There's name,
8 address, Social Security number, and date of birth. She'll
9 compare what Equifax provided, which is on the left. That's
10 the ID of the person disputing, and she compared the
11 information in Wells Fargo's records -- in other words, the
12 information they have on the person who opens the account --
13 and she just checks boxes, whether it's the same or different.

14 And because the first and last name, the Social
15 Security number, and the date of birth matched, she verified
16 that the account was accurate. Other than that, and modifying
17 some numbers about the account, she didn't do anything to
18 investigate. She also confirmed that this was consistent with
19 Wells Fargo's policies and procedures.

20 But verifying an account because the information
21 matches is not an investigation. You will hear our experts
22 discuss that.

23 In fact, in an identity theft situation, the thief
24 uses the consumer's identity. So it's going to match. The
25 thief used Mr. Sponer's name, Social Security number, date of

Opening Statement - Plaintiff

1 birth. That's what identity theft is. So using this matching
2 process to try to determine if there's identity theft is
3 useless.

4 A reasonable investigation would involve looking at
5 the information in Wells Fargo's own records, information from
6 the police, information from Mr. Sponer. But Wells Fargo
7 doesn't consider any of that information.

8 Ms. Grier did as she was trained to do. She followed
9 Wells Fargo's procedures, but those procedures violate the
10 law.

11 Next we have Exhibit 51. This is an ACDV from
12 November 2016, processed by a Wells Fargo employee named
13 Montressa Ebron, same dispute of identity fraud. And you will
14 see her deposition. We'll show you a videotape of her
15 deposition, which is a sworn statement, in which she verified
16 the account -- she will testify she verified the account
17 belonged to Mr. Sponer by matching the identification
18 information, the same procedure that Ms. Grier used. And
19 Ms. Ebron will state this is the system Wells Fargo uses. She
20 stated that this verification of identity was all she did to
21 determine if the account should remain on Mr. Sponer's credit
22 report.

23 Finally, she confirmed she followed Wells Fargo's
24 policies and procedures. So she sends a response to Equifax
25 saying it is Mr. Sponer's account.

Opening Statement - Plaintiff

1 Thank you.

2 It stays on his credit report. There's no
3 investigation of his dispute whether the account was identity
4 theft. The evidence will show that following Wells Fargo's
5 procedures and policy does not comply with the FCRA.

6 You will also see the deposition testimony of Bets
7 Berg. This was a person Wells Fargo gave us as their
8 corporate representative for us to question about the facts of
9 this case. And she agrees all the ACDVs were processed
10 consistent with Wells Fargo's policies and procedures.

11 This isn't the case of some employee making a mistake
12 or doing something wrong. We're not making any blame on any
13 of these employees. They're following the policies and
14 procedures. The policies and procedures are the problem. And
15 what's worse, under those policies and procedures, the ACDV
16 employee cannot even investigate a dispute of identity theft.

17 You will hear Ms. Berg state that, that the person
18 who handles the ACDVs does not investigate disputes about
19 fraud or identity theft and cannot conclude that there's
20 identity theft. In other words, they cannot investigate
21 Mr. Sponer's dispute, although the FCRA requires that they
22 investigate that dispute.

23 The ACDV employees also testified that they handle 10
24 disputes an hour for identity theft disputes. That means they
25 spend an average of six minutes per dispute.

Opening Statement - Plaintiff

1 You will see a deposition of Brian Funsch. He's a
2 Wells Fargo employee who processed an ACDV in 2017. He'll
3 state that the whole investigation just took a few minutes.
4 But that's enough time for the employees to do what Wells
5 Fargo wants them to do and tells them to do: Look at the
6 ACDV. Compare the identifying name, address, Social Security
7 number, and date of birth between their records and the ACDV.
8 Check the box as to whether they're the same or different, say
9 the information is verified, and send the ACDV back. Doing
10 that doesn't take very long. A real investigation takes time.

11 Under Wells Fargo's procedures, only the fraud
12 department can investigate whether there's identity theft.
13 But you saw Mr. Sponer's letters to the fraud department.
14 They weren't investigating. And the fraud department is not
15 the department communicating with the CRAs as to whether the
16 account stays on the credit report.

17 And that's Mr. Sponer's claim, that when Wells Fargo
18 got those ACDVs, it did not do an investigation and tell the
19 CRAs to delete. That's separate from the fraud department,
20 who is not involved in the ACDVs.

21 Now, Wells Fargo, they don't want to discuss the
22 ACDVs and how they handle them, but that's the issue you're
23 going to decide. So instead, Wells Fargo, they're going to
24 call witnesses from the fraud department. Again, that
25 department took no actions regarding the ACDVs. We will show

Opening Statement - Plaintiff

1 you the deposition testimony of the employees who processed
2 the ACDVs, the real issue in this case.

3 Now, Wells Fargo might say, "Oh, the agent handling
4 the ACDV would be working with the fraud department." That is
5 not so. Ms. Grier did not work with the fraud department in
6 doing her investigation. She just did her matching and
7 provide some information and responded that it was his
8 account. Brian Funsch, who handled an ACDV in 2017, testified
9 he had no communication with the fraud department about
10 whether this account resulted from identity theft.

11 Wells Fargo had numerous opportunities to fix the
12 false credit reporting for more than 14 months, but did not do
13 it. It has denied all wrongdoing throughout this case.
14 You'll hear the corporate representative testify that Wells
15 Fargo did not violate the Fair Credit Reporting Act.

16 But Wells Fargo may now decide to admit some limited
17 liability and say they were negligent. If so, it is only
18 because we are here before you, a jury, and they don't want to
19 look so bad.

20 But their conduct was much more than negligent. As
21 you will see from the evidence, Wells Fargo's actions were
22 reckless and willful violations of the FCRA. Even if they
23 admit some fault, they will still blame others and not take
24 true responsibility. They may even try to blame Matt Sponer,
25 the victim of their own misconduct, by claiming he did not

Opening Statement - Plaintiff

1 send them documents they requested, such as a Social Security
2 card. Of course, they did not need documents from him to know
3 it was identity theft. They knew that from the police. And
4 they also had Mr. Sponer's Social Security and other
5 information from Mr. Charne and because he's their customer.

6 Once he disputed and Wells Fargo learned from the
7 police the account was from identity theft, they should have
8 removed it so that his credit report would be accurate. They
9 did not need anything else. Wells Fargo received 10 ACDVs.
10 Not once did they do a reasonable investigation that the FCRA
11 requires. A reasonable investigation would have fixed this
12 problem in the first dispute in 2016.

13 Our witnesses, the first, Matthew Sponer, he will
14 discuss the evidence you've seen and all the letters back and
15 forth, the credit report, and everything he went through with
16 Wells Fargo. And his damages are extensive. He had emotional
17 distress and discomfort. He had damage to his reputation,
18 because this account was on his report. He did not seek
19 credit because this information was on his report. He had to
20 spend a lot of time dealing with this Wells Fargo issue. It
21 disrupted his life, it affected his family's vacation, and it
22 affected his relationship with his family, especially his
23 daughter, Farah.

24 You will hear from Evan Hendricks, a nationally
25 recognized expert on credit reporting, the FCRA, and identity

Opening Statement - Plaintiff

1 theft. He will explain the credit reporting industry and
2 provide his opinion that the investigations of Mr. Sponer's
3 disputes by Wells Fargo were not reasonable.

4 Another witness is Thomas Tarter. He's an expert in
5 the field of banking and credit reporting. He will discuss
6 this fraudulent loan in the context of the banking industry
7 and state his opinion that Wells Fargo's actions did not meet
8 industry standards.

9 You'll also hear testimony from Mr. Sponer's spouse
10 and his mother about how the actions of Wells Fargo affected
11 him and his relationship with his daughter, Farah.

12 And we'll read a deposition from Equifax's
13 representative, Celestina Gobin. She will testify about all
14 the ACDVs that Wells Fargo responded to with Equifax and kept
15 telling Equifax how the account was accurate, and how, in
16 reliance on Wells Fargo's assurance that the account was
17 accurate, Equifax kept it on his credit report. She will also
18 discuss two occasions where Equifax provided Mr. Sponer's
19 credit report to companies while the Wells Fargo account was
20 on it.

21 As you hear the evidence, we ask that you keep your
22 focus on Wells Fargo's actions in response to the notices of
23 his disputes on the ACDVs from the CRAs.

24 As you saw, the FCRA requires that Wells Fargo do a
25 reasonable investigation and take other action in response to

Opening Statement - Defendant

1 those ACDVs. Our claim is that it did not take those required
2 actions in handling the ACDVs. Wells Fargo may try to shift
3 the focus from the ACDVs to other things that are not relevant
4 to our claim.

5 The account was identity theft. Wells Fargo knew
6 that in 2016. There were 10 ACDVs, but Wells Fargo never did
7 an investigation and tell the CRAs to delete this fraudulent
8 account.

9 After the evidence is presented, I will have the
10 opportunity to address you again, and we will ask that you
11 hold Wells Fargo accountable for its corporate misconduct with
12 a verdict in favor of Matthew Sponer.

13 Thank you for your attention.

14 THE COURT: Do you want to do your opening statement
15 now or would you prefer to wait until after lunch?

16 MR. PETERSON: What time is it, Your Honor?

17 THE COURT: It's a quarter after noon.

18 MR. PETERSON: I'm fine waiting or proceeding, your
19 preference.

20 THE COURT: Go ahead and do your opening statement.

21 MR. PETERSON: Thank you.

22 Good afternoon, ladies and gentlemen. Thank you very
23 much for your time on this case and for your attention.

24 As I mentioned previously, my name is Dan Peterson.

25 I'm one of the lawyers for Wells Fargo Bank. My co-counsel is

Opening Statement - Defendant

1 Tim Fransen. And with us at the counsel table is Megan
2 Braxton. Megan is a Wells Fargo employee who is the head of
3 credit bureau operations for Wells Fargo Auto.

4 Your time and attention is very important, because
5 this is obviously an important case. It's important to
6 Mr. Sponer. It's important to Wells Fargo.

7 You've heard from Mr. Sola, and he has told you the
8 facts of the case, the background. And in many respects we
9 all agree on what happened. We agree on the order letters
10 were received and sent. We agree on what was in those
11 letters. But, of course, we wouldn't be here if there weren't
12 some differences. And what I think is important is to go
13 through our timeline, and I have a little different starting
14 point than Mr. Sola.

15 As he mentioned -- as Mr. Sola mentioned, this case
16 started with identity theft. Identity theft is, as you're
17 going to hear from several witnesses and as you likely
18 know -- some of you experienced it, and many in the original
19 jury pool experienced it -- it's a significant and substantial
20 problem that faces many consumers in the country.

21 This case started when a criminal in Southern
22 California stole Mr. Sponer's identity. That criminal in this
23 case, you'll hear reference that this is what's referred to as
24 "true name fraud" or "true identity fraud." This isn't a case
25 where an identity thief skimmed a debit card number or

Opening Statement - Defendant

1 otherwise stole a debit card. This is a case where the
2 identity thief or thieves stole all of the information. They
3 stole Social Security cards -- Social Security numbers. They
4 stole IDs. They created fake IDs with the thief's picture and
5 Mr. Sponer's name. They used old addresses of Mr. Sponer's.
6 It was a sophisticated identity theft ring.

7 And in the spring or summer of 2016, that's when this
8 happened, when the thief in California stole Mr. Sponer's
9 identity and began opening accounts. And you're going to see
10 evidence that there were multiple accounts. Wells Fargo
11 certainly was one of them, but there were dozens of accounts
12 opened, some significant, some less so, but all opened by the
13 thief, with the intent of stealing Mr. Sponer's identity and
14 stealing from the companies from which he sought credit.

15 In July of 2016 that identity thief purchased a car.
16 He went into a used car dealership in Southern California with
17 an ID that had his picture and Mr. Sponer's name. He went
18 into the car dealership with other identifying information of
19 Mr. Sponer, and he filled out an application, and he purchased
20 a used car from the car dealership.

21 That car dealership used Wells Fargo Auto Services,
22 Dealer Services, to finance the loan. This isn't a situation
23 where a thief walked into a Wells Fargo branch and talked to a
24 banker and took out a loan. This is he went into the used car
25 dealership. That dealership happened to use Wells Fargo.

Opening Statement - Defendant

1 Sometime in October of 2016 Mr. Sponer finds out
2 about this, while he's on his trip. I believe the detectives
3 contact Mr. Sponer's brother, and they inform him that this is
4 going on. Mr. Sponer is contacted and gets the information.

5 And shortly thereafter, as Mr. Sola told you,
6 Mr. Sponer contacted an attorney that he knew named James
7 Charne. And Mr. Charne in October, October 19th of 2016, he
8 sent a letter to Wells Fargo. And you'll see that letter and
9 you'll see what was included with it.

10 A week later Wells Fargo employee Will
11 Brady -- you're going to hear from Mr. Brady. You're going to
12 hear from Mr. Brady in person. He'll be here to explain to
13 you his involvement in this case. His involvement starts on
14 October 26th, when he sends a letter, after reviewing the
15 letter from Mr. Charne. And in that letter on October 26th,
16 Mr. Brady, following Wells Fargo's policies and procedures,
17 asks for additional information from Mr. Sponer.

18 I want to talk about policies and procedures very
19 quickly. Wells Fargo, it's no secret, it's a huge national
20 bank. You were here when we were asking the jury questions
21 and asked who had a Wells Fargo account, and lots of people
22 raised their hands. It is a huge bank that has to have
23 policies and procedures that it follows. And those policies
24 and procedures, it's not realistic to think that they can
25 cover every single situation, but they have to be policies and

Opening Statement - Defendant

1 procedures that make sense in most situations, that help the
2 employees to address problems that come from consumers, and
3 that are reasonably based to identify and solve problems.

4 And in those policies and procedures, when the fraud
5 department receives a complaint of identity theft, they ask
6 for certain information from the consumer. They ask the
7 consumer to do a fraud affidavit, their statement -- their
8 signed and sworn statement that they are the victim of fraud.

9 They ask for a police report if there is one. They
10 ask for a photocopy of a driver's license or picture
11 identification. And they ask for a Social Security card.

12 You're going to hear evidence, testimony, about the
13 reason why those four items are important and especially
14 important in a true name identity theft like this one,
15 because, for example, the Social Security card, most of the
16 time, the vast majority of the time, an identity thief does
17 not get the physical card.

18 I don't know about you, but when I was a kid, I was
19 really excited to carry around my Social Security card in my
20 wallet, but rarely do people do that anymore. That is the
21 type of information that is not often stolen by the identity
22 thief. And so a photocopy of that is an additional way that a
23 bank such as Wells Fargo can confirm that they are talking to
24 the victim of identity theft.

25 The request for this information from Mr. Sponer is

Opening Statement - Defendant

1 in the letter, and you saw a copy, and you'll see it more, and
2 it will be admitted into evidence. Bullet points, "Here's
3 what you need to send us," clear, concise, nothing hidden.
4 "Send us this information as part of our investigation into
5 your fraud complaint."

6 You're also going to hear testimony from our experts
7 the difficulty in dealing with fraud and the importance of
8 confirming the personal information of the person claiming
9 fraud.

10 In this same general time frame between October 29th
11 and October 17th, Wells Fargo received four ACDVs. And you
12 are going to -- well, you're going to get tired of hearing all
13 these acronyms, but you're going to hear a lot about ACDVs.
14 And, again, as Mr. Sola stated, it's the response to those
15 ACDVs that Mr. Sponer is complaining about for Wells Fargo's
16 conduct.

17 So this is -- they received the ACDVs, four of them,
18 between October 29th and November 17th of '16, and respond
19 between November 3rd and December 2nd. The statute, the law,
20 requires a response within 30 days.

21 The policies and procedures of Wells Fargo, when they
22 receive an ACDV that alleges identity theft or fraud, is to
23 forward those complaints, those ACDVs, to the fraud department
24 to make the fraud department aware. The fraud department is
25 better equipped to deal with the unique circumstances of an

Opening Statement - Defendant

1 ACDV-related fraud.

2 You are going to hear testimony that ACDVs cover a
3 wide variety of complaints. Identity theft and fraud is just
4 a part of it. They also cover, "I got a statement and my
5 balance is wrong. You didn't update my address. You've got
6 the wrong thing," other things like that, and so there's a
7 wide variety of circumstances.

8 When Wells Fargo receives an ACDV alleging fraud, it
9 gets forwarded to the fraud department. And you're going to
10 hear testimony from expert witnesses, including plaintiff's
11 own expert, saying that's fine to have two divisions within
12 the bank that deal with that.

13 After Mr. Brady's October 26th letter, on
14 January 24th, several months later, Wells Fargo received a
15 letter from Mr. Sponer. And in that letter, four months
16 later, in that letter it includes certain information that was
17 requested, but not all of the information that was requested.

18 You're also going to see the information -- I
19 mentioned in the beginning that the identity thieves were
20 sophisticated and they were vicious. They opened many
21 accounts. You're going to see -- you're going to hear
22 testimony that at this same time, January 24th, Mr. Sponer was
23 sending several other letters to other creditors as a result
24 of the identity thief's actions.

25 You're going to hear evidence that this letter, the

Opening Statement - Defendant

1 January 24th letter, did not get forwarded to the fraud
2 department. And you're going to hear testimony from Wells
3 Fargo that it should have. It should have gone to the fraud
4 department, and it didn't.

5 Now, on February 15th Wells Fargo responded. And
6 Mr. Sola showed you that letter, the response on
7 February 15th. I suspect you didn't like it. I know
8 Mr. Sponer didn't like it. And, at the end of the day, the
9 bank doesn't like it. The January 24th letter didn't get to
10 the right place. And we'll talk about that with Mr. Brady,
11 we'll talk about that with an individual named John Cooper,
12 and we'll talk about that with Ms. Braxton.

13 At this point in the story, right around here, right
14 around February 15th, Mr. Sponer and his family return to the
15 States. They're back here. I believe the testimony will be
16 that Mr. Sponer was back in the United States when he received
17 the February 15th letter.

18 On February 15th, and then approximately six months
19 later, no correspondence in between February 15th, on
20 August 18th Mr. Sponer purports to send a letter to Wells
21 Fargo. You will hear testimony that Wells Fargo -- you will
22 see in their records that there are records of receiving
23 correspondence, of phone calls, of everything that happened in
24 this case, but you won't see a record of the August 18th
25 letter. Wells Fargo doesn't receive it.

Opening Statement - Defendant

1 You'll see -- no one knows exactly if that letter was
2 sent, if it got lost in the mail, if it didn't get received.
3 We know that Wells Fargo doesn't have any note of it and
4 couldn't find it in its files. You'll also see evidence that
5 any other letter that was sent to Wells Fargo had a return
6 receipt, a certified mail. The August 18th letter doesn't
7 have certified mail. So Wells Fargo does not believe it
8 received that letter.

9 But it's also important that right around that same
10 time frame, Mr. Sponer is writing to multiple other creditors
11 complaining about the problems that are being caused by the
12 identity thief, by the theft, and by the fraudulent accounts
13 that have been opened in his name, including some creditors
14 that he wrote to initially back in January of 2017.

15 The next letter that Wells Fargo actually received
16 from Mr. Sponer, has a record of receiving, happened about
17 another three months later, a little less than three months
18 later. On November 3rd of 2017 Mr. Sponer sends a letter to
19 Wells Fargo. Again, it's important to note that in this time
20 frame, he continued to deal with several other accounts that
21 were fraudulently opened that are now showing on his credit
22 report as derogatory accounts. And that included,
23 November 3rd of 2017, it also had some creditors that, again,
24 were in his first wave of correspondence from back in January.

25 On November 21st of 2017 Wells Fargo responded to

Opening Statement - Defendant

1 Mr. Sponer's early November letter, requesting missing
2 identifying information, the Social Security card. The
3 November 3rd letter includes additional information, but again
4 didn't include the Social Security card. And you're going to
5 hear -- as I said, you're going to hear from Will Brady, who
6 authored that letter. And he going to discuss the policies
7 and procedures behind doing that. He's going to discuss what
8 his actions were in requesting that information.

9 The same time frame again, about a year after the
10 first ACDVs were received, Wells Fargo receives three more
11 ACDVs. And Wells Fargo responds to those ACDVs in a timely
12 manner.

13 On December 1st of 2017 Mr. Sponer sends another
14 correspondence -- you looked at it with Mr. Sola -- stating
15 that he doesn't have a Social Security card. That is
16 approximately 14 months, 13 months after Wells Fargo first
17 said, "Please send us this information so we can verify your
18 identity." Fourteen months later Mr. Sponer says, "I'm sorry.
19 I don't have a Social Security card."

20 And you're going to hear testimony from Wells Fargo
21 about what the next steps were when they got that information
22 that he didn't have a card and what the steps would have been
23 had they received that same statement earlier.

24 There are additional ACDVs received, then, at the end
25 of November and into December, which Wells Fargo timely

Opening Statement - Defendant

1 responds to. Again, it's the ACDV responses that are at issue
2 in this lawsuit.

3 On December 22nd, as Mr. Sola stated, plaintiff filed
4 the lawsuit that we're here about today. And in January of
5 2018, the trade line -- you'll hear it referred to as a trade
6 line -- the account was deleted from his credit. You'll hear
7 testimony that based on the information that had been
8 received, that likely would have been the outcome without the
9 filing of the lawsuit. But the facts are the facts. It
10 happened after the filing.

11 Who will you hear from? Mr. Sola already told you,
12 you'll hear from plaintiff's witnesses, and we'll have the
13 opportunity to ask them some questions as well.

14 You're going to hear from Megan Braxton. As I said,
15 Ms. Braxton is the head of the credit bureau operations for
16 Wells Fargo. She's going to explain Wells Fargo's policies
17 and procedures. She's going to explain more for you about
18 what happens in the ACDV process, about the ACDV responses and
19 obligations with that.

20 You're going to hear from Will Brady. Mr. Brady was
21 the person who was actually dealing with this in the fraud
22 department, who was receiving and reviewing the letters that
23 were forwarded to him, who was requesting information, and who
24 was reviewing what was sent back in response to his requests.

25 You're going to hear from John Cooper, who is the

Opening Statement - Defendant

1 head of the fraud department for Wells Fargo Dealer Services
2 or Wells Fargo Auto. And Mr. Cooper is going to talk about
3 the fraud department, what it does, what it did in this case,
4 and its interplay with the credit bureau team.

5 And you're going to hear from our expert witnesses,
6 Dean Binder and Brian Kelley, who are both recognized experts
7 in their fields of credit, credit dispute resolution.
8 Mr. Kelley has particular experience and background in
9 banking. And they're going to discuss with you Wells Fargo's
10 policies and procedures and the reasonableness of those
11 policies and procedures and the reasonableness, under all the
12 circumstances of this case, of Wells Fargo's conduct.

13 After all that evidence comes in, lots of documents,
14 lots of witnesses in the witness stand up there telling you
15 their stories, I'll have a chance to talk to you again as
16 well. And at the close of evidence, you're going to be asked
17 to make several decisions. You're going to be asked to decide
18 whether Wells Fargo was negligent in the way it investigated
19 and responded to the ACDVs. Did it make a mistake? You're
20 going to be asked to decide, as Mr. Sola said, did Wells Fargo
21 willfully violate the FCRA?

22 And Judge Hernandez is going to instruct you on that,
23 what "willfully" means in this context. Even Mr. Sola
24 admitted, it's a heightened standard. It's malicious, it's
25 oppressive. Did Wells Fargo willfully violate the FCRA?

Opening Statement - Defendant

1 And then the final questions will be related to
2 damages. If you determine Wells Fargo was negligent or
3 willful, what damages did Mr. Sponer suffer and how should he
4 be compensated for those damages if he did suffer them?

5 It's going to be very important throughout this case
6 that you pay very close attention to the evidence that's
7 presented about the true cause of the damages, if any, that
8 Mr. Sponer suffered. You can't hold Wells Fargo responsible
9 for damages that he suffered related to what the identity
10 thief did. The identity thief caused him to have to deal with
11 a dozen accounts. You can't hold Wells Fargo responsible for
12 what Home Depot did, requiring four notices or three notices
13 being sent before they would deal with the account.

14 Wells Fargo, if you decide that they have
15 responsibility here, you need to rationally and reasonably
16 base that liability on conduct that is attributable to Wells
17 Fargo.

18 I appreciate, again, your time and attention to this
19 case, and we will look forward to presenting our evidence to
20 you over the next few days.

21 Thank you.

22 THE COURT: Members of the jury, we're going to take
23 our midday recess at this time. It's about 12:35. Let's get
24 back together at 1:30.

25 During the course of the recess -- you're going to

1 hear me repeat this a number of times -- remember the
2 precautionary instruction directing you not to discuss the
3 case with anyone or use your devices to do research,
4 et cetera.

5 Jennifer will escort you into the jury room. She'll
6 get you settled in there. She might point you to places where
7 you can grab a bite to eat if that's what you wish to do.

8 One of the things that happens when you come back
9 from lunch, you have to buzz to get back into the jury room.
10 Jennifer will explain this to you. Jennifer isn't always
11 there to unlock the door to let you back into the chambers
12 area, and that means that somebody else in my chambers needs
13 to decide whether to let you in or not. The way they know
14 whether to let you in is if you turn back towards the
15 camera -- so the door is facing one way. You have to turn
16 back towards the camera and display your juror button, and
17 then they'll buzz you in. If you remember to do that, it will
18 make life much easier.

19 So if you can be back a few minutes before 1:30,
20 we'll try to get started right at 1:30, judge time, and then
21 we'll proceed apace.

22 Thank you very much. Have a good lunch.

23 (A lunch recess is then taken.)

24 (The Court, counsel, the parties, and the jury
25 reconvene.)

Sponer - D

1 THE COURT: Good afternoon. Be seated.

2 Call your witness.

3 MR. SOLA: We call Matthew Sponer.

4 THE COURT: Step forward and be sworn.

5 MR. SOLA: Matthew Sponer.

6 THE CLERK: There are stairs right there.

7 Raise your right hand.

8

9 MATTHEW JOHN SPONER

10 called as a witness in his own behalf, having been first duly
11 sworn, is examined and testifies as follows:

12

13 THE CLERK: Please have a seat. State your name and
14 spell it.

15 THE WITNESS: My name is Matthew Sponer. I guess the
16 middle name is John. M-a-t-t-h-e-w J-o-h-n S-p-o-n-e-r.

17

18 DIRECT EXAMINATION

19 BY MR. SOLA:

20 Q. Mr. Sponer, where do you live?

21 A. I live in Sellwood, in Portland, Oregon.

22 Q. Do you have a family?

23 A. Yes. I have a wife, Ana, that I've known since college,
24 and two daughters.

25 Q. And what is your profession?

Sponer - D

1 A. I'm a computer programmer.

2 Q. Could you explain what that means, being a computer
3 programmer?

4 A. It's kind of like I just throw myself at problems really
5 hard and just stay at it like a dog until I figure out what it
6 is.

7 Q. Are you working on a certain kind of computer program or
8 certain profession now?

9 A. Yes. I'm working with some folks that are making a
10 website for first-time home buyers.

11 Q. Do you have any special interests or hobbies?

12 A. I really like to just focus on my family; and my wife
13 does, too. And the way that we've kind of enabled that is by
14 going camping a lot and spending time in nature, so we also
15 sail. And then by myself, I like to read a lot.

16 Q. Can you give us some background on your work history?

17 A. I've been programming my whole life. And in high school,
18 I fixed networks for a company. Then I moved on to fixing
19 databases for companies. And then after that, my wife and I
20 started a little video game company; and we did that for
21 several years. And after that, I was invited to join a
22 company that was just starting.

23 Q. So would that be called a startup?

24 A. Yes.

25 Q. Can you tell us a little bit about that startup.

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1 A. It's mobile technology. It's like a software company that
2 deals in the mobile app ad space.

3 Q. And so did that take a lot of your time?

4 A. Yeah. It was an extraordinary amount of work. I really
5 enjoyed it professionally and it was really challenging and
6 difficult and it was just a fun story, but it was working all
7 the time.

8 Q. And did your hard work eventually pay off?

9 A. It did. Our company was purchased by a larger company.

10 Q. And then did you have a share in the sale price?

11 A. Yeah. I wasn't like a super duper person, so I had a 5
12 percent ownership in the company and -- but then ultimately I
13 had less because the investors take some as they invest in it.

14 Q. And so what did you end up getting out of that, your
15 share?

16 A. About \$635,000.

17 Q. And what did that mean to you? Was that a big payday?

18 A. Yeah. It was enormous. I mean, and I -- I was real
19 grateful that it worked out.

20 Q. All right. And then what is it you decided you wanted to
21 do at that point?

22 A. I felt like I was caught up in work too much and that my
23 kids were young and I wanted to focus on them and spend more
24 time with them.

25 So instead of being prudent and saving for

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1 retirement, we decided to take off sailing. That had been
2 like a thing we had been planning for a long time, and we were
3 just wanting to do it, but it was never the right time. And
4 we figured, if it's not now, then when?

5 Q. And did you feel like you had a limited window of time to
6 do that trip?

7 A. Yes. Both my daughters are -- I don't know. They're at
8 an age where they want to be with us all the time, so we want
9 to travel and focus on them with that. And then, also, my
10 special needs daughter has health issues, and it's just kind
11 of uncertain with her, so we really value, like, any time that
12 we have, that we can spend with her, like, you know, measured
13 on a scale of months or years or something like that.

14 Q. Really because you're worried about her health?

15 A. Yes.

16 Q. Why don't you mention your daughter Farah and tell us a
17 little bit about her.

18 A. She's 16 now. She has a rare genetic condition called
19 Angelman's syndrome.

20 THE COURT REPORTER: Say it again.

21 THE WITNESS: Angelman's syndrome.

22 BY MR. SOLA: (continuing)

23 Q. It might help if you sit a little closer.

24 A. I'm learning.

25 It's -- it yields a profound intellectual disability.

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1 And she has epilepsy, scoliosis, poor motor control, and she
2 can't talk.

3 Q. And how about her mobility? Is she able to walk?

4 A. Not independently.

5 Q. Was Farah's condition a factor in taking this family trip?

6 A. Yes.

7 Q. Could you explain that?

8 A. Well, part of it was like we're already living outside the
9 bounds of a normal family, so we didn't feel like we'd be
10 losing that much. It's not like she'd be missing school or
11 anything. And it's also that other children, they just die
12 unexpectedly or they have problems, or their behavior, they
13 get more medically intense, so you can't go far away from
14 civilization or -- yeah, so it just -- people get more tied to
15 where they are and have to be near hospitals and stuff. So we
16 just felt she's healthy now. She's in a good group now.
17 Let's go.

18 Q. How is Farah's social life if she can't talk?

19 A. It's all, like, being in the moment with people,
20 like -- it's like certain people, she just sees them and she
21 resonates with them. And it's just like they look into her
22 eyes and she looks into their eyes and it's like -- you have
23 to, like, be really present with her. And she's a really
24 social person and she's really loving, but that's her whole
25 experience of people.

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1 Q. Does proximity or touching factor into that?

2 A. Yes. It's like -- one of her favorite things to do is
3 just be like sitting on the couch beside somebody and showing
4 them her toys or having them do it with her. But even in the
5 same room, it's important to her that someone is in the same
6 room.

7 Q. All right. So is that how you spend your time socializing
8 with her?

9 A. Yeah. I felt like since she can't talk and she's not
10 that -- she doesn't really know what's going on, like -- so
11 like school starts and her experience of it, she doesn't know
12 school is starting. She just knows she's getting on a bus and
13 she's going to a different room of people, and then she comes
14 back. So I felt like it naturally causes a lot of anxiety or
15 uncertainty unless she feels super centered and loved. So
16 it's always been my priority to just give her as much as I
17 possibly can.

18 Q. Now, you mentioned about this dream of going sailing. And
19 so did you get to take that trip?

20 A. Yes.

21 Q. Tell us about what it is to live on a sailboat.

22 A. My wife calls it wet camping. And it's like -- sort of
23 like a tiny house that floats, and I consider it more like
24 RV-ing, but you're not -- so, you know, instead of driving
25 around America, you're driving around the world.

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1 And I really enjoy it. It's like one of
2 my -- there's just so many beautiful moments that come from
3 it.

4 Q. A lot of us might have different pictures of what it might
5 involve, but are you and your family and friends sailing the
6 boat or do you have some professional crew?

7 A. No, it's just us. Yeah, we do everything.

8 One of the most compelling things about it for me
9 and us is that it's like -- by getting away from civilization,
10 it's like you get to focus on each other, and it's like it
11 deepens the love. And there's no Internet and no distractions
12 from normal everyday life. And somehow, after months,
13 you -- like your mind clears and you're just more present.

14 Q. And so who cooks?

15 A. It's usually me. I don't know why. I think I'm just more
16 energetic, so --

17 Q. And then what about maintenance? Do the boats require
18 maintenance?

19 A. Yeah. They need constant maintenance. I mean, it's
20 just -- stuff is breaking and you're really far away from
21 everything and you're just trying to -- you know, sometimes
22 things work well and it's like smaller things that are
23 breaking. But sometimes we get stuck, like the engine breaks
24 and we just can't move until we figure out how to fix it.

25 Q. And did you take a lot of responsibility for the

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1 maintenance?

2 A. Yes. I mean, my wife is also really good at it. She can
3 fix little gas-powered generators and, you know, all that kind
4 of -- she's good, too.

5 Q. But it's not like you've got some mechanic on board,
6 right?

7 A. Oh, no, not while we're traveling. When we're in port,
8 you know, sometimes we have people help us figure stuff out.

9 Q. All right. Are you a customer of Wells Fargo?

10 A. Yes.

11 Q. And how long have you been a customer?

12 A. I think for about 20 years.

13 Q. And what accounts do you have?

14 A. I have a checking, a credit card, and a retirement account
15 and other accounts.

16 Q. Now, before you took your trip, did you contact Wells
17 Fargo?

18 A. Yes.

19 Q. And then would this have been -- what year would we be
20 talking about that you're going to contact them?

21 A. Oh, it was November 2015.

22 Q. All right. What did you tell them?

23 A. I made travel plans with them, where I said I was going to
24 be out of the country for more than a year. And I listed all
25 the countries with, like, approximate dates that I'd be in

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1 these places.

2 Q. And then did you learn of a problem while you were on your
3 trip?

4 A. Yes.

5 Q. And what was that problem?

6 A. I guess the simple answer is my identity was stolen.

7 Q. How did you learn about that?

8 A. A Detective Tugashov from the Chula Vista Police
9 Department sent an e-mail to my brother or, actually --
10 sorry -- he made a phone call to my brother, which went to my
11 brother's e-mail because it was transcribed, and my brother
12 forwarded that e-mail to me.

13 Q. And where were you? You were overseas?

14 A. Yes.

15 Q. And what did you learn the identity theft involved?

16 A. Actually, I haven't seen -- okay. Eventually I learned
17 that it involved like a very expensive car purchased through
18 Wells Fargo.

19 Q. And so Wells Fargo made a loan to somebody using your name
20 during the time you told them you'd be out of the country?

21 A. Yes.

22 Q. And then what did you do after you learned you were a
23 victim of identity theft in terms of trying to resolve it?

24 A. Well, we weren't in a place where we could just, like,
25 talk on the phone easily or be scratchy or sound weird or have

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1 like, fast wifi like you do in America, where you go to
2 whatever website you want and it works. So we -- I knew an
3 attorney, and I wrote to him and asked him to handle it for
4 me.

5 Q. And then between the attorney and you, did you end up
6 making many disputes to Wells Fargo?

7 A. Yes.

8 Q. And did any of those disputes fix it?

9 A. No.

10 Q. And how was it eventually fixed?

11 A. I sued Wells Fargo.

12 Q. All right. So after you learned you were a victim of
13 identity theft, did you contact an attorney?

14 A. Yes.

15 Q. All right. And how did you have an attorney?

16 A. When we had our video game company, this guy had helped us
17 with, like, copyrights because we didn't know anything about
18 that kind of stuff. So it had been, like, a long time, like
19 maybe 10 years, since I had last contacted him. I'm not sure
20 actually. But I had his e-mail and I e-mailed him.

21 Q. All right. And then what did you want him to do?

22 A. Just -- the first step was just to call the detective
23 back, because I just had this voicemail with this phone
24 number, and I just wasn't able to call him effectively. So it
25 was like, "Please call him and figure out what's going on."

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1 Q. And did he do that?

2 A. Yes.

3 Q. All right. And then did he contact other people to try to
4 resolve the problem?

5 A. Yes. I know he contacted three credit reporting agencies,
6 and he contacted Wells Fargo. I'm not sure if he contacted
7 anybody else.

8 Q. All right. Let's look at Exhibit 2.

9 And do you recognize Exhibit 2?

10 A. Yes.

11 Q. And what is it?

12 A. This is a letter that Mr. Charne sent to Wells Fargo.

13 Q. All right. And just trying to summarize the first
14 paragraph, what is that?

15 A. It says he's been engaged by me to act on my behalf in
16 connection with identity theft and that I'm a victim of that.
17 I've been out of the country since November of 2015, traveling
18 by sailboat with my family. Yeah, that's the first paragraph
19 basically.

20 Q. And then the third paragraph, could you tell us what that
21 says?

22 A. "Mr. Sponer first became aware of the fraud on October 13
23 when his brother was contacted by Detective Edward Tugashov of
24 the Chula Vista California Police Department. According to
25 Detective Tugashov, among the acts of identity theft, the

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1 perpetrator fraudulently purchased and financed through Wells
2 Fargo a BMW automobile."

3 Q. And what about the next paragraph?

4 A. "Fortunately a suspect" --

5 Q. Or you can paraphrase. You don't have to read it.

6 A. Okay. The suspect is in custody, and the automobile has
7 been recovered. The police can confirm it. And the police
8 officer says that the car will be returned to Wells Fargo.

9 Q. And then there's two requests; is that right?

10 A. Yes.

11 Q. And what's the first request?

12 A. Since this loan was not taken -- is not mine, we request
13 that no damaging information be reported to credit agencies,
14 or if information has already been reported, that it be
15 corrected.

16 Q. And then the second request, you don't have to read the
17 whole thing, but what is he requesting?

18 A. Oh, that they just not make a mistake and turn off my
19 checking and credit card account.

20 Q. And why was it important they not turn off your checking
21 or credit card account?

22 A. That was our only access for money, so we'd kind of be
23 really stuck if they accidentally turned off our ATM and Visa
24 card.

25 Q. As far as you know, was this the first contact with Wells

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1 Fargo advising them of the identity theft?

2 A. Yes.

3 Q. And so it was through your attorney that they, Wells
4 Fargo, learned how they could recover their car; is that
5 right?

6 A. Yes.

7 Q. Now, I see at page 3 is a limited power of attorney. Why
8 was that enclosed?

9 A. I believe Mr. Charne had to prove to Wells Fargo or
10 whoever he wrote to that he had authority to act for me. So
11 he had me fill out this limited power of attorney.

12 Q. And was that notarized?

13 A. Yes.

14 Q. And so did you have to give the notary some proof of
15 identity?

16 A. Yes. I had to show them -- I think I usually showed them
17 both my passport and my driver's license.

18 Q. Did Mr. Charne end up talking to Wells Fargo?

19 A. Yes.

20 Q. Do you know what happened in that conversation?

21 A. I remember -- so Mr. Charne related to me --

22 MR. PETERSON: Objection, hearsay.

23 THE COURT: Sustained.

24 BY MR. SOLA: (continuing)

25 Q. Were you aware of false items on your credit reports

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1 around the end of October to mid November?

2 A. Yes.

3 Q. Would you look at Exhibit 4. Do you recognize this?

4 A. Yes. This is my credit report dated October 27th, 2016.

5 Q. Could you turn to page 6 of 7. And what do you see on
6 page 6?

7 A. I see the account, the Wells Fargo Dealer Services
8 account.

9 Q. And by "account," do you mean the fraudulent account?

10 A. Yes.

11 Q. Did you ask Mr. Charne to contact credit reporting
12 agencies?

13 A. Yes.

14 Q. Do you know if he did so?

15 A. Yes.

16 Q. All right. Now, you end up -- let's move to the middle of
17 November. Where are you then?

18 A. I'm in New Zealand.

19 Q. Would you look at Exhibit 5. And do you recognize this?

20 A. Yes. This is my credit report from November 9th, 2016.

21 Q. All right. And could you turn to page 2. What do you see
22 of concern to you on page 2?

23 A. The Wells Fargo account that's fraudulent is still on
24 there, and it says, "60 days past due."

25 Q. All right. What do you understand that means?

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1 A. They are saying that I took out a loan and never made a
2 payment.

3 Q. And do you see a balance? What is that showing?

4 A. It shows \$29,419.

5 Q. And then just above that box that had the balance, there's
6 a thing called "remarks." Can you read that?

7 A. Yes. I believe it says, "Dispute investigated completed.
8 Consumer disagrees."

9 Q. What does that mean?

10 A. My understanding of that is that they're aware I disputed
11 it, they've completed their investigation, and they're just
12 marking for their system that I disagree with them.

13 Q. And who is "they"?

14 A. Wells Fargo.

15 Q. So was it your understanding that this was after -- well,
16 obviously. So you understood that Wells Fargo had already
17 investigated and rejected your dispute?

18 A. Yes.

19 Q. How did you feel about that?

20 A. I -- I really expected that when -- you know, by the time
21 I got to New Zealand or whatever, that -- I trusted them at
22 that point. So I thought that they would handle it. So I was
23 disappointed and kind of confused that they just didn't remove
24 it from my credit report.

25 Q. All right. And then while you were in New Zealand, did

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1 you then decide you needed to take some additional steps to
2 try to address the credit reporting and identity theft?

3 A. Yes.

4 Q. And what did you do?

5 A. So I was just worried that this was going to be much -- be
6 more complicated than I thought it would be. So we didn't
7 have good Internet on our sailboat, so I found a place, like a
8 temporary office place, where you can rent a desk. So I did
9 this thing where I could rent a desk for a day.

10 Q. All right. And how long did you -- well, let me -- so you
11 had an office; is that right?

12 A. Yes.

13 Q. And how often did you go there?

14 A. Not like every day, but it seemed like about five days a
15 week.

16 Q. And approximately how long was that?

17 A. It was from the end of November to the early part of
18 January.

19 Q. All right. And what were you doing during that time?

20 A. Well, I really had no clue of what identity -- I mean, how
21 to resolve identity theft or even how the whole system worked.
22 So I was looking on the Internet and just reading about it.

23 I found, you know, the FTC has a website that has a
24 lot of information. And then there's a lot of other things.
25 And then later, when I found out that there were all these

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1 things I had to do, I just started doing them, and that took
2 time.

3 Q. And you said "FTC." What does that refer to?

4 A. Federal Trade Commission.

5 Q. All right. So what did you learn, specifically, on the
6 FTC website about what you, as a victim of identity theft,
7 should do?

8 A. They have kind of like a -- you know, instructions. And
9 it's fill out an FTC identity theft affidavit. Oh, attach a
10 police report, get a police report. And use this kind of like
11 template letter that you put them all together and then mail
12 to the creditors, the people that have the fraudulent
13 accounts.

14 Q. All right. And so you started working on the letter, the
15 affidavit, and getting the police report?

16 A. Yes.

17 Q. And then was your plan to send that material to the
18 creditors who had opened fraudulent accounts?

19 A. Yeah. That was my understanding of how you fix identity
20 theft.

21 Q. Now, having this office and spending all this time there,
22 did that affect your plans that your family had previously
23 made to visit New Zealand?

24 A. Yes. We bought a used car, and our plan was just to drive
25 around and see the whole country, like to see the south island

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1 and the big volcanos and the Kauri forests I think they're
2 called.

3 But I felt like this was the most pressing thing we
4 had to do, like we had to just get our finances in order. I
5 was just worried that it would just get more complicated. So,
6 yeah, we just didn't travel there as much as we planned.

7 Q. Did you end up doing some traveling in New Zealand?

8 A. Yes. We did a few day trips, and then we did a couple
9 like overnight trips.

10 Q. All right. So could you approximate how much of your
11 plans you were able to carry out?

12 A. We were there from mid November, then left in mid
13 February. And I think from the receipts of the office space,
14 I kind of -- or, actually, when these letters were sent, so
15 around that. I'm sorry to make it complicated. I'd say about
16 two or three weeks.

17 Q. Out of --

18 A. Oh, out of --

19 Q. -- months?

20 A. -- December, January -- out of three months.

21 Q. And then going to this office almost every day, did that
22 affect your relationship with Farah?

23 A. Yes.

24 Q. Could you explain how?

25 A. She's just so in the moment, like she doesn't -- she wants

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1 you to be with her and she wants you to be next to her and she
2 wants you to be looking at her and playing with her and stuff
3 like that. So she doesn't understand when people, like,
4 disappear.

5 And -- and she needs like a lot of prompting, like to
6 keep learning to use utensils so she doesn't go backwards to
7 eating with her hands, all these, like, habits that we've been
8 working on for years and years that just take her a long time
9 to learn.

10 Q. All right. So it sounds like you tried to get her into
11 good habits. And then was the fact that you were away, did
12 that affect her continuing to keep good habits?

13 A. Yeah. For one reason or another in our family, it's kind
14 of like she's -- like when our second daughter was born, it's
15 kind of like I took over, I became more primary for Farah,
16 like the person that does these things for her and spends the
17 time with her while my wife kind of, you know, was
18 breast-feeding our daughter, the other -- sorry, our younger
19 daughter.

20 Q. Did you see a regression with Farah during the time that
21 you were working at that office?

22 A. Yes.

23 Q. What kind of things?

24 A. The most problematic for us is like the toileting, because
25 it just -- it took us a really, really long time to get her

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1 out of diapers and it has a big impact on how she's -- like
2 how much she can go out in the world, you know -- you know,
3 ride a bus or just do different, things and how independent
4 she can be from us ultimately, because we're always thinking
5 farther, like when she's 20 or 30 or something like that, like
6 it makes a big difference.

7 Q. Can you tell us your feelings when you see that kind of
8 regression?

9 A. I blame myself and it makes me sad because, like, I'm just
10 a normal person that has this really complicated daughter, and
11 I'm like trying to step up and do everything that she needs.
12 And when I fail at that, I just feel like I'm just letting her
13 down.

14 Q. And how about physically? Do you have a role in terms of
15 physically helping her move?

16 A. Yeah. She's almost as big as my wife or maybe -- it
17 depends on how you measure, by weight or height. I think
18 she's heavier. But yeah. So Farah needs a lot of assistance,
19 like going and just -- even pushing a grocery cart or
20 something, you have to be like her hands on the cart and walk
21 beside her and keep her hands on the cart, but walking, you
22 have to hold on to her and anticipate like if she's going to
23 trip or if she's going to have a problem stepping up on a curb
24 or something like that or going upstairs. It's kind of like,
25 if there's not a good, like, ADA-type railing, you really have

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1 to support her and you have to have, like, your hand under her
2 armpit and another on her waist and kind of be like helping
3 her and making her safe.

4 So it's a lot easier for me. Sorry. I rambled. But
5 it's a lot easier for me because I'm just bigger, and my wife
6 isn't. So when I'm not there for these types of things,
7 it -- yeah.

8 Q. I'm sorry. I didn't mean to cut you off.

9 A. I was just going to say, Farah doesn't get to go out and
10 see much because it's not easy to take her places, to get her
11 in and out of the car and or to get her up and down stairs and
12 do all these things, and also it's just harder on my wife.

13 Q. All right. Would you look at Exhibit 6. Do you recognize
14 that?

15 A. Yes.

16 Q. What is it?

17 A. This is an e-mail that I sent to a Detective Mark Kelly.
18 I forget. There are multiple police departments involved with
19 this, and I forget which one he's at.

20 MR. PETERSON: Your Honor, objection to this exhibit,
21 hearsay.

22 THE COURT: I think I sustained the objection to this
23 during the pretrial conference.

24 MR. SOLA: I am so sorry. I apologize, Your Honor.

25 All right. Are there others in this vein? Was it 7

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1 or 8?

2 THE COURT: I'm checking my notes right now. You
3 might be right.

4 (There is a brief pause in the proceedings.)

5 THE COURT: You are correct, 6 through 9 are
6 received. You can go back to that. I apologize for that
7 confusion.

8 MR. PETERSON: Your Honor, for the record, we renew
9 our objection to 6 through 9.

10 THE COURT: Thank you.

11 MR. SOLA: All right. Let's go back to Exhibit 6.

12 THE COURT: Members of the jury, the problem with
13 these exhibits is they contain hearsay statements. Hearsay
14 statements are statements by other individuals. Typically
15 they're offered for the truth of the matter asserted, and
16 that's objectionable. And I overruled the objection.

17 But I'm going to instruct you that you cannot take
18 these statements for their truth, but only for explaining why
19 the plaintiff took his next steps. It's not for -- you're not
20 to assume that whatever is in there is true, but it does help
21 explain why he did what he did next. It's for those reasons
22 that these exhibits are being received.

23 You may proceed.

24 MR. SOLA: Thank you.

25

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1 BY MR. SOLA: (continuing)

2 Q. Do you recognize Exhibit 6?

3 A. Yes. It's an e-mail that I sent to one of the police
4 officers involved in the identity theft.

5 Q. And were you responding to something he had sent you?

6 A. Yes. He had contacted me through Facebook Messenger, but
7 it was when I didn't have good Internet, so I didn't receive
8 it until I was in the rented office space in New Zealand.

9 Q. And why were you contacting him?

10 A. It was an older message that he had sent to me, and I was
11 just following up with him to see if I needed to do anything
12 because -- I don't know -- a police officer writes you a
13 message, it felt prudent to write him back and make sure he
14 had everything he needed from me.

15 Q. Everything he needed in regard to what?

16 A. To prosecuting the thief. I don't know.

17 Q. And did he respond?

18 A. Yes.

19 Q. And do you see that at the bottom -- well, the lower half
20 of the exhibit?

21 A. Yes. He said, "A subject was arrested by Chula Vista
22 police for unlawfully using your personal identity to commit
23 the theft. If you have already been in contact with that
24 agency, no further action is required. If not, I encourage
25 you to reach out to Detective Tugashov."

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1 Q. And then would you look at Exhibit 7. What is that?

2 A. This is a similar e-mail that I wrote to two other police
3 officers who had contacted me.

4 Q. And who is this one to?

5 A. It's Edward Tugashov, and I believe the other police
6 officer is Glenn Gosset, but I'm not sure on that. Oh, it
7 says that -- sorry -- right on the piece of paper.

8 Q. I see. What date is this?

9 A. I wrote this on November 23rd. But I'm not sure, from
10 looking at this Facebook Messenger thing, what date they tried
11 to contact me.

12 Q. And why were you writing to these officers?

13 A. The same thing: to check in that there wasn't anything
14 more I needed to do as far as they were concerned.

15 Q. And if we scroll down on that, is there a response?

16 Actually, it might be the next page. Yes.

17 Did you get a response from Detective Tugashov?

18 A. Yes.

19 He said, "No, sir. I think we are good. The suspect
20 who purchased a BMW and opened credit card accounts using your
21 identity was arrested. He already pled guilty and his
22 sentencing is scheduled" -- I think that's "for
23 November 30th." And he was writing this on November 23rd, so
24 it was just six or seven days later.

25 "Make sure you follow up with the credit bureaus to

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1 repair your credit."

2 Q. Now, were you working on the FTC identity theft affidavit
3 in the latter part of 2016?

4 A. Yes.

5 Q. And did you need your credit report to fill out that
6 affidavit?

7 A. Yes.

8 Q. Were you able to obtain it?

9 A. Yes.

10 Q. And then how did you use that to fill out the FTC
11 affidavit?

12 A. I copied all of the account numbers and company names and
13 amounts. The FTC affidavit has a lot of little fields, where
14 it's the date, the account number, the various things for the
15 different -- then the names of the creditor. And I just had
16 to copy it, you know, into the affidavit.

17 Q. All right. And was Wells Fargo one of the accounts you
18 saw on your report at that time?

19 A. Yes.

20 Q. And can you tell us how that made you feel?

21 A. I think I was just frustrated because I'd -- I felt like
22 it was handled with them, with Wells Fargo specifically.

23 Q. Why did you think it shouldn't have been on your report
24 with Wells Fargo at that time?

25 A. Because I knew they had talked to the police and my lawyer

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1 had already contacted them and, according to the detective, I
2 think -- I think the detective said the car had been returned.

3 MR. PETERSON: Objection, hearsay.

4 THE COURT: Sustained.

5 THE WITNESS: Sorry.

6 BY MR. SOLA: (continuing)

7 Q. Would you look at Exhibit 8. Now, this is what date?

8 A. Oh, this is an e-mail I sent to Detective Tugashov -- no,
9 sorry -- yeah, it's Edward Tugashov, on January 10th, 2017.

10 Q. And can you read the title at the top?

11 A. "Do you have court documentation for Jason Yochum's case?"

12 Q. And why were you seeking that documentation?

13 A. I felt like with Wells Fargo not just solving it for me,
14 like I was expecting, that maybe they just needed more
15 information or maybe it would be that much more obvious if I
16 could, like, send the thief's guilty plea or -- I don't know.
17 I've never seen court documentation, so I don't know what it
18 looks like, but yeah.

19 Q. And did he respond?

20 A. Yes.

21 Q. And it might be farther down -- let's see -- or the next
22 page.

23 All right. And so what was the gist of his response
24 to your request for court documentation?

25 A. He gave me some extra case numbers and just tracking

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1 numbers that go within the court and police system. Then he
2 said that he couldn't provide it to me directly, but that I
3 could get it either by visiting them in San Diego or
4 contacting the district attorney who prosecuted the case.

5 Q. All right. Were you able to go to San Diego?

6 A. No.

7 Q. Why not?

8 A. It would be obscenely expensive and time-consuming to get
9 there.

10 Q. Okay. You were still in New Zealand?

11 A. Oh, yes. Sorry.

12 Q. And so what did you do after this?

13 A. I contacted the district attorney that he mentions.

14 Q. Would you look at Exhibit 9. What is Exhibit 9?

15 A. This is the e-mail that I sent to the district attorney.

16 Q. And what date is it?

17 A. January 10th, 2017.

18 Q. All right. And what are you asking her for?

19 A. I'm asking that she send me anything that might be
20 appropriate for the case to then forward on to the various
21 credit agencies and creditors. And then I tell her that I've
22 been trying to use the San Diego court's website for the last
23 few weeks, and it wasn't working.

24 Q. All right. Could you explain to us what problem you had
25 there?

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1 A. I would try to do a search, and I thought that I was using
2 it right and it should just work, but it would kind of like
3 hang and not do anything. So I tried multiple times of days,
4 multiple days of the week, just to see if it was overloaded
5 and if there was a good time to be able to fetch the
6 documentation.

7 Q. Now, were you seeking this information in regard to your
8 dispute with Wells Fargo?

9 A. Yes.

10 Q. Now, did Ms. French respond?

11 A. Yes.

12 Q. Okay. Let's see. I think it's in the lower right there.

13 And what was the essence of her response?

14 MR. PETERSON: Objection, hearsay.

15 THE COURT: Has this exhibit been received?

16 MR. PETERSON: It has.

17 THE COURT: I'm sorry?

18 Then he can read the response. Your objection is
19 overruled.

20 You may respond.

21 THE WITNESS: It's an e-mail from the district
22 attorney, and it says, "Unfortunately, I cannot provide you
23 with any documentation because it is court documents" --

24 THE COURT: Can you slow down when you read?

25 THE WITNESS: Sorry.

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1 BY MR. SOLA: (continuing)

2 Q. And you can just summarize.

3 A. Okay. I'll do better.

4 THE COURT: The other rule, by the way, is when I'm
5 speaking, nobody else speaks. And when a witness or a lawyer
6 is speaking, only one person speaks at a time. Again, she
7 can't take more than one person speaking at a time, and we
8 want a complete record, so try to keep those rules in mind:
9 Slow, one person at a time.

10 Go ahead.

11 THE WITNESS: "You may be able to request copies of
12 the minute orders showing the defendant has been convicted,
13 but that has to be requested through the Court."

14 Then she gave me the phone number. I believe that's
15 the court. It says South Bay Criminal Division. Then she
16 referred me back to Detective Tugashov to get police reports.

17 BY MR. SOLA: (continuing)

18 Q. All right. And were you able to get the documents while
19 you were in New Zealand, the court records?

20 A. No.

21 Q. Now, how did the Wells Fargo account compare to the other
22 fraudulent accounts?

23 A. It was by far the largest. I think it was for 29,000 and
24 some hundreds. And the next largest account was about 3,000
25 or less than \$3,000.

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1 Q. Did you have any -- well, were there specific worries
2 about the fact that it was Wells Fargo that was stating that
3 you owed them more than \$29,000?

4 A. Yes. So, too, it's that I had a long -- had been a
5 long-time customer of theirs and had accounts with them. So I
6 didn't want them to just accidentally turn off any of my
7 accounts.

8 But I also feared that if there was, like,
9 some -- maybe there's some internal process of theirs where
10 they would just pull it out of my accounts. And then there
11 was another one where it's like if they don't get it, if I
12 can't resolve it with them, I mean, they're my bank, and they
13 know a lot more than me than other companies, that it would be
14 just much harder.

15 Q. What did they know about you?

16 A. All my credit card transactions, all my ATM transactions.
17 I mean, my complete -- I mean, not my complete financial life,
18 but, I mean, the part that I do stuff with day to day.

19 Q. Would you look at Exhibit 11. What is Exhibit 11?

20 A. This is a letter that I sent to Wells Fargo on
21 January 19th, 2017.

22 Q. Why did you send this letter?

23 A. This was to dispute the fraudulent account with them.

24 Q. And who did you send it to?

25 A. Wells Fargo.

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1 Q. And then after you identified the account number, the
2 first paragraph, what's the -- again, I don't want you to read
3 it, because I know it makes it hard for the court reporter,
4 but if you could summarize it.

5 A. I say there's a police report. I point out which pages.
6 My name is specifically mentioned in the police report. I say
7 that the case is prosecuted by the Chula Vista Police
8 Department and San Diego criminal court. The defendant pled
9 guilty and was sentenced. And, further, I'm in New Zealand
10 and have not been in the United States since November 2015.

11 Q. All right. How about the first paragraph? What do you
12 say you're enclosing?

13 A. Oh, a copy of the police report.

14 Q. And what else?

15 A. Oh, the FTC identity theft report.

16 Q. And then there's a box. What did you put in this box?

17 A. The defendant's -- I guess the thief's name, the criminal
18 court case number, the police department case number, and the
19 police report number.

20 Q. And why did you put that information in?

21 A. I thought if they didn't trust me or maybe for their own
22 records, they could go and look it up themselves.

23 Q. Why did you mention the pages of the police report that
24 referenced you?

25 A. Because it was a really long report, and I thought someone

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1 might not read it carefully, so I just wanted to make it easy
2 on them, so that they could flip straight to the pages and see
3 my name.

4 MR. SOLA: All right. Could we see the bottom of the
5 document.

6 BY MR. SOLA: (continuing)

7 Q. Down below the box, what do you tell them?

8 A. I tell them that Mr. Charne contacted them in 2016 and
9 confirmed with them that the vehicle in question was recovered
10 by the police and returned to them.

11 Q. And then you also enclose a notice; is that right?

12 A. Yes.

13 The basis of this letter was a letter that I got from
14 the Federal Trade Commission's website, and for some reason
15 they want you to include like an excerpt from the Fair Credit
16 Reporting Act to these letters.

17 Q. All right. Then what do you ask in the last sentence?

18 A. In that paragraph it says, "Please cease reporting this
19 information to the CRAs. Investigate this and delete the
20 disputed items as soon as possible." And I wasn't sure which
21 last sentence you meant.

22 Q. I meant the last sentence on this page.

23 A. "Please send me a letter documenting the actions you have
24 taken to absolve me of any responsibility for the information
25 I am disputing which result from the identity theft."

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1 Q. Did you ever get any such letter?

2 A. No.

3 Q. All right. Let's turn to the next page. And then it
4 lists attachments.

5 Actually, let's go to the next page. And what's
6 this?

7 A. This is the identity theft affidavit that I got from the
8 FTC website.

9 Q. Let's look at the first section. What did you put in this
10 section about you?

11 A. I put in various ways to identify myself. I put my name,
12 my birth date, my Social Security number and my driver's
13 license number and my mailing address -- oh, and also my phone
14 number and e-mail address.

15 Q. All right.

16 MR. SOLA: Then next section, if we could keep going
17 below that and then the next page.

18 BY MR. SOLA: (continuing)

19 Q. All right. The declarations, what do you say there?

20 A. I'll paraphrase it so it's not like enormous for the
21 transcriber or the court reporter.

22 It says I didn't authorize this person to use my
23 identity and I did not receive any benefit as a result of the
24 events of this report and that I'm willing to work with law
25 enforcement.

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1 Q. Then the next section about the fraud, what did you put in
2 there?

3 A. I put the name of the person that was caught and pled
4 guilty and sentenced. And then I put all of the court and,
5 you know, government numbers that I had.

6 Q. Then let's turn to the next page. This Section 15,
7 "Additional Information," what did you write in there?

8 A. I just tried to give some background, that I'm in New
9 Zealand, I've been out of the United States since
10 November 12th, 2015. I again say which pages of the police
11 report they can find my name. And then I explain because
12 since, when we go, our home address isn't a good place to
13 receive mail, we use a mail service that scans the mail for
14 us. So I explained that.

15 Q. And then in the next section, "Documentation," do you
16 indicate that you could verify your identity?

17 A. Yes. I say I'm capable of verifying my identity.

18 MR. SOLA: All right. Could we turn to the next
19 page.

20 BY MR. SOLA: (continuing)

21 Q. And then what is in this section?

22 A. This is where I started listing all of the fraudulent
23 accounts that were on my credit report.

24 Q. All right.

25 MR. SOLA: Let's scroll down to the bottom of the

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1 page and then next page.

2 BY MR. SOLA: (continuing)

3 Q. And then on the bottom of that page, what did you enter?

4 A. This is the entry for Wells Fargo, and there I got the
5 \$29,419 amount and, you know, part of the account number and
6 other dates.

7 MR. SOLA: All right. Could you turn to the next
8 page. And then let's go to page 10.

9 BY MR. SOLA: (continuing)

10 Q. Oh, just for the a moment, could you look at those -- no,
11 let's move on. It's too many numbers.

12 All right. This page, what do we have?

13 A. This is my signature, and then below that is the
14 notarization of this affidavit.

15 MR. SOLA: Let me see the top of it again.

16 BY MR. SOLA: (continuing)

17 Q. All right. And so by signing, what are you certifying?

18 A. That the information in the affidavit is true.

19 Q. All right. And look at the last sentence above your
20 signature. What does that say?

21 A. "I understand that knowingly making any false or
22 fraudulent statement or representation to the government may
23 violate" -- then it lists a bunch of laws, and then it says,
24 "and result in a fine, imprisonment, or both."

25 Q. And then you sign, right?

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1 A. Yes.

2 Q. And then below that it says your affidavit.

3 Did you get a notary to notarize it?

4 A. Yes.

5 Q. How were you able to get it notarized?

6 A. I couldn't find one in New Zealand near me, so I found
7 that there is an online notary service, where you go on a
8 video call with them and show them your identification and I
9 guess whatever you normally do with a notary.

10 Q. All right. Then the next attachment, let's look at that.
11 And what is this?

12 A. This is the first page of the police report.

13 Q. All right. And, as you said, it's long, so I won't go
14 through it all, but how about page 7? And I'm going to use
15 the number at the top, because I think it's a little easier to
16 find on these documents.

17 Are you on page 7?

18 A. Yes. I'm listed as victim No. 14. It says, "Sponer,
19 Matthew."

20 Q. All right. So there were other victims by this thief?

21 A. Yes. But all I know about that is what's on this police
22 report.

23 Q. Would you look at page 16. And are you mentioned here?

24 A. Yes. It says that there is a debit card that is a piece
25 of evidence -- sorry, a debit card in my name.

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1 Q. Would you look at page 20. Are you mentioned in the first
2 paragraph?

3 A. Yes.

4 It says that someone rented the hotel room using a
5 stolen credit card belonging to Matthew Sponer and that they
6 checked into the hotel room using my identification. The
7 person has been identified as Jason Yochum.

8 Q. What about page 23? Could we look at that? And are you
9 again mentioned there?

10 A. Yes.

11 In the second paragraph, I just saw -- I've never
12 read police reports really. I mean, this is my first one, but
13 I think there are multiple police departments involved or
14 detectives, so the writer of this one is saying that Edward
15 Tugashov -- that he met Edward Tugashov, and he said he was
16 already investigating the theft of my identity and, let's see,
17 his investigation yielded a fingerprint match on a forged
18 check passed in my name. Oh, wait. Yeah.

19 Let's see. He was going to a local casino using my
20 identity, and that Mr. Yochum was using a fake ID with my name
21 on it.

22 Q. All right.

23 I'm sorry. Did I cut you off?

24 A. Yes. Sorry. Oh, and that this information is -- let's
25 see. "Yochum is also believed to have purchased a new BMW

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1 vehicle with Sponer's identity."

2 Q. And what does that refer to?

3 A. The Wells Fargo fraudulent account.

4 Q. Okay. I note that it says, "Detective Tugashov informed
5 me that Sponer is a world traveler and is currently on a
6 cruise ship in the ocean." Is that accurate?

7 A. No. Our sailing trips are nothing like a cruise ship.

8 Q. All right.

9 MR. SOLA: And could you just turn back to the first
10 page again, the first page of the letter.

11 BY MR. SOLA: (continuing)

12 Q. In that second paragraph where you said about the police
13 report, that references to your identity could be found at
14 those pages, is that what you were referring to, the ones we
15 just went through?

16 A. Yes. I was trying to be helpful, you know, and point it
17 out.

18 Q. Helpful to who?

19 A. Whoever read the letter, that they could just go there and
20 see.

21 Q. But who was your letter sent to?

22 A. To Wells Fargo.

23 Q. All right. Now, gathering the letter, or making your
24 dispute letter and getting the fraud affidavit completed,
25 going through the police report, did that take you some time?

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1 A. Yes.

2 Q. Is that part of the things you did while you rented the
3 office in New Zealand?

4 A. Yes.

5 Q. So what did you expect would happen after you sent Wells
6 Fargo this letter with all the detail, the notarized FTC fraud
7 affidavit, the police report that mentioned you as a victim
8 several times?

9 A. I felt since I was -- I felt like I was doing everything
10 right. I mean, I was following the FTC website. And I also
11 felt like I had way more evidence than anyone else that
12 has -- I mean, not anyone else, sorry -- but just than a
13 typical identity theft case. So I expected them to just
14 resolve it.

15 Q. Did that happen?

16 A. No.

17 Q. Did you get a response to your letter?

18 A. Yes.

19 Q. Could you look at Exhibit 12. What is Exhibit 12?

20 A. This is a letter I received from Wells Fargo on
21 February 15th, 2017.

22 Q. All right. And what does the first sentence say?

23 A. "Thank you for your recent correspondence regarding the
24 above-referenced account."

25 Q. And what does the second sentence say?

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1 A. "Wells Fargo Dealer Services has verified that the
2 information being sent to the consumer credit reporting
3 agencies on this account is accurate."

4 Do you want me to go on?

5 Q. Well, first, what did you think when you read those words?

6 A. I guess kind of shock and fear that this wouldn't be easy,
7 because, like I just said, I just -- I wasn't sure what was
8 going on.

9 Q. All right. And then what does the second sentence say?

10 A. "Our verification is based on a review of our records, as
11 well as the information for this account on file with Equifax,
12 Experian, and TransUnion."

13 Q. And what were your thoughts when you read that sentence?

14 A. It -- it didn't make sense to me, because I knew that they
15 had talked to the police and to my lawyer, and I couldn't
16 understand --

17 MR. PETERSON: Objection, lacks foundation.

18 THE COURT: Sustained.

19 BY MR. SOLA: (continuing)

20 Q. Okay. What had you sent them that was in their records,
21 in addition to anything else they might have had?

22 A. A 20- to 30-page police report, my identity theft
23 affidavit, yeah.

24 Q. All right. And the third -- the third paragraph, that
25 first sentence, what does that say?

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1 A. "If your records do not agree, please provide additional
2 information, such as copies of cancelled checks or receipts
3 and any other detailed information" -- I'm sorry -- "related
4 information that may substantiate a potential discrepancy."

5 Q. And what did you think that meant?

6 A. That they just weren't organized or that they -- to me it
7 meant that my letter that I had spent so much time on landed
8 on someone's desk at Wells Fargo and they clicked the wrong
9 button. So they sent me a form letter that was completely
10 inappropriate, or at least that paragraph. And I don't know.
11 I wasn't sure what they were doing.

12 Q. Well, what kind of dispute does this seem to refer to?

13 A. Oh, it seems to be that I'm -- like it's as if I didn't
14 pay a bill instead of fraud.

15 Q. So I think -- did you refer to this as a form letter?

16 A. Yes.

17 Q. Was that offensive to you?

18 A. I don't know what -- I mean, to me it's understandable
19 that large companies have computers and form letters. But I
20 think it's like there's always people sitting at their desk
21 and they see something. And to me, it's like -- there's sort
22 of a moral responsibility or an importance to treating, you
23 know, when you're at work, other people as if they're like a
24 relative or a child or a parent, like to just try to do the
25 right thing versus just kind of click or -- I don't know.

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1 Q. Did you feel like your letter and documents were read?

2 A. No.

3 Q. And then after you got this letter, did you know what to
4 do?

5 A. No.

6 Q. So did you not do anything for a while?

7 A. Yeah. I mean, we received this when we had just returned
8 back to the United States, and we were caught up in kind of
9 turning back on our United States lives, of like kind of
10 moving back into our house and things like that.

11 But I also -- I just didn't -- I didn't know what to
12 do. So I, like -- you know, I looked on the Internet, and I
13 didn't find another thing as easy as the FTC checklist with
14 step-by-step instructions for what you do if they deny a
15 clearly -- you know, a clear-cut case of identity theft.

16 Q. Now, you had told us that you had gathered this
17 information, the police report and the FTC affidavit. I
18 believe you had -- I don't want to misspeak. Was your
19 intention to send that letter and these materials to the other
20 creditors?

21 A. Yes.

22 Q. And did you do that?

23 A. Yes.

24 Q. And did anybody respond like Wells Fargo and say they
25 verified?

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1 A. No.

2 Q. Now, I know you -- well, do you remember every letter you
3 wrote then and every response you got?

4 A. No. There were a lot of them. And I even made a
5 spreadsheet, because I'm kind of a nerd, but it just got too
6 disorganized because the cases and branches kept changing.

7 Q. What is your general recollection as to the results of
8 those dispute letters to the other creditors?

9 A. That it was very easy. In general, I'd send this enormous
10 letter, and it would be resolved.

11 Q. All right. But there might have been one or two or some
12 that didn't fix it; is that right?

13 A. Yes. I know that -- I don't remember which specific
14 cases, but there were some companies where it felt like I
15 timed it wrong with their internal processes, so like I'd send
16 it, and it would get resolved at the company, but it had
17 already been referred to a collection agency, and so then the
18 collection agency would go after me. But to me, that was like
19 just -- there was a little bit of understandable, you know,
20 chaos or something. I don't know.

21 But then -- and then I think another set of
22 companies, it wasn't clear what their mailing address was, so
23 I had to try multiple times in order to hit the right mailing
24 address, because there's one on their website for where to
25 secondhand disputes to, and then there's one on the credit

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1 report that also says where to send the disputes to, and it
2 seems like I had to hit the right one of those.

3 Q. Is there any one of those that wrote back to you fairly
4 quickly and said it was resolved?

5 A. Macy's.

6 Q. Do you recall if any of the creditors requested a Social
7 Security card?

8 A. No.

9 Q. Okay. You indicated you were back in the United States.
10 Can you tell us why you returned?

11 A. Partly to handle this. We felt like -- we didn't feel
12 like we were safe with our money situation. We thought that
13 there could be a mistake from Wells Fargo or that -- like
14 either they would turn off the account or they would just pull
15 it out of our accounts. So it felt like a big priority to fix
16 the identity theft.

17 And it's also like we were -- you know, we were in
18 New Zealand, but we weren't really like traveling and doing as
19 much as we wanted. And then my wife's brother was dying, and
20 she decided to donate her kidney to him.

21 Q. When you got back to the States, did you still think that
22 Wells Fargo might fix its inaccurate reporting?

23 A. I had some hope that, like, yeah, maybe it would -- like
24 it was sitting on some part of their internal machinery or
25 process, and it just needed to wind its way through properly,

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1 so that if I just give it some time, maybe they would figure
2 it out.

3 Q. All right. And so you gave it some time; is that right?

4 A. Yes.

5 Q. And then your wife was doing some things about the kidney
6 donation?

7 A. Yeah. There were a lot of tests and she had to go to
8 Atlanta for more tests. And then we kept thinking her
9 donation would happen, you know, that we'd find out about it
10 and it would be in a couple weeks she would then have it. So
11 it was kind of a lot of uncertainty, but also thinking that we
12 were almost -- that she was about to do it.

13 Q. And what time frame are we talking about now?

14 A. This is -- it's in that year, but I'm not sure.

15 At some point her brother got a blood transfusion and
16 it changed her antibodies or something like that and she was
17 no longer a match for him and she had to go into some kind of
18 chain donation, thing. I feel like I'm rambling. But, yeah,
19 I don't remember when all these parts of the story happened.

20 Q. Okay. In March 2017 did something happen regarding your
21 homeowner's insurance?

22 A. Yes. I was renewing our homeowner's insurance, and it got
23 significantly more expensive.

24 Q. And do you know if your credit report was pulled by your
25 homeowner's insurance company?

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1 A. Yes.

2 Q. And how do you know that?

3 A. Because it showed up on my credit report. The insurance
4 company's name was on there.

5 Q. And do you know if the credit report -- well, I guess they
6 pulled it to check your credit. Is that your understanding?

7 A. Yes.

8 And when I asked why it got significantly more
9 expensive --

10 MR. PETERSON: Objection, relevance.

11 THE COURT: Sustained.

12 BY MR. SOLA: (continuing)

13 Q. And how did you feel about your home insurance company
14 seeing your credit report while Wells Fargo was on it?

15 A. I'd always taken a sort of pride in my credit report,
16 because I try to be just fair and honest and pay my bills and
17 all that kind of stuff, so I felt like the credit report sort
18 of reflects that, that I'm conscientious or something. So I
19 was embarrassed that it was in there.

20 And then it felt kind of shady or like a criminal,
21 because if anybody sees it, it's like they're going to say
22 that, you know, you did this horrible thing. It says on it
23 that you stole a car, like you went to a lot and drove it away
24 and never made a payment. I mean --

25 Q. Is that how you felt it portrayed you, as someone who had

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1 stolen a car?

2 A. Yes.

3 Q. All right. Then did you check your credit report in
4 August of 2017?

5 A. Yes.

6 Q. And what did you see on there related to Wells Fargo?

7 A. The account was -- the fraudulent account was still on
8 there.

9 Q. And so then did you decide to try to tackle it again?

10 A. Yes.

11 Q. Would you look at Exhibit 13. What is Exhibit 13?

12 A. This is the letter I wrote to them on August 18th, 2017.

13 Q. Why did you write this letter?

14 A. I thought I'd try again.

15 Q. Let's look at the letter. Up above the "Dear sir or
16 madam," what do you say in terms of the notice?

17 A. "Third notice."

18 Q. And why did you put that in?

19 A. Because they were being difficult, like I felt like I
20 should just make it sort of -- I just imagined it landing on
21 someone's desk, and when someone is at work, someone is
22 looking at it and thinking, what should I do about this? And
23 I felt like putting "third notice" on it, maybe they will perk
24 up their mind and they'll pay more attention to it.

25 Q. Then in the first paragraph, this looks similar to the

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1 last letter; is that right?

2 A. Yes. I used the previous letter and then added to it.

3 Q. Let's look down there to the paragraphs below that. It
4 looks like you're adding a chronology of the prior disputes
5 and responses; is that right?

6 A. Yeah. I wanted each letter to kind of, as much as I could
7 be, just make it stand on its own, because I had imagined it
8 landing on someone's desk and they'd kind of flip through it.
9 And I want them to do what's fair or do what's honest, so I
10 just put a timeline of what had happened so far so that they
11 could see, and it wasn't like they'd just pass it off to
12 someone else. You know, I wanted it to be complete.

13 Q. And then you referenced their response on February 15,
14 2017, where they say the information is accurate. And you
15 said, "Given this enormous amount of evidence, I don't see how
16 that makes any sense."

17 So what are you trying to convey there?

18 A. Sometimes like with a giant corporation, there's all this
19 machinery and something will fall out wrong or something, and
20 I just wanted to, like, highlight, "You're not -- you're
21 doing" -- I don't know, just highlight that "I need to get off
22 some path you've put me in" or something.

23 Q. And then did you provide a police report?

24 A. Yes.

25 MR. SOLA: And let's scroll down, the next page.

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1 BY MR. SOLA: (continuing)

2 Q. All right. And what did you put in that box at the top?

3 A. That's again all the criminal court case numbers, police
4 department numbers, and the name of the thief.

5 Q. Then it looks like there's something that says "Equifax."
6 What is that excerpt you put in there?

7 A. That's like a screenshot of my credit report, an excerpt
8 of my Equifax credit report.

9 Q. And just one portion. Which account is this?

10 A. This is the Wells Fargo account.

11 Q. Why did you put that excerpt of Wells Fargo on your
12 Equifax credit report into this letter?

13 A. I wanted to make it obvious this wasn't a line item on
14 some spreadsheet in their system, that they were actually
15 reporting this to someone else, I mean, that they were saying
16 this about me.

17 Q. Now let's look at that entry from Equifax. Below the
18 account number, do you see a word?

19 A. "Derogatory."

20 Q. All right. What does that mean to you?

21 A. That it's a negative item on my credit report.

22 Q. And then if you go down below the date of October 1, 2016,
23 what do you see?

24 A. "Collection, charge-off."

25 Q. And what does that mean to you?

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1 A. It meant to me that I was now in their collection
2 machinery, that at any point there could be, you know, like
3 phone calls or a letter from a lawyer or that they would just
4 take it out of my account.

5 Q. Did that worry you?

6 A. Yes.

7 Q. And then at the bottom of that excerpt, "Consumer disputes
8 after resolution, charged-off account," what does that first
9 part, "Consumer disputes after resolution," mean?

10 A. That as far as they're concerned, yeah -- I mean, they're
11 aware of my dispute, but I don't know what else it means,
12 yeah.

13 Q. Did you feel there was resolution in regard to this
14 dispute?

15 A. No.

16 Q. Then did you enclose documents again?

17 A. Yes, all the attachments from the previous letter, and I
18 don't remember if I added more to this one.

19 Q. Why did you enclose those documents?

20 A. Again, I just wanted it to --

21 MR. SOLA: Can we turn to the next page, so we can
22 see the attachments. Okay. Thank you.

23 THE WITNESS: I just wanted it to be more obvious.
24 I wanted this letter to stand on its own as enough
25 information, because I felt like if I reached the right person

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1 there at Wells Fargo, they would see this and be like, "Oh,
2 look, this is wrong," and then just fix it for me.

3 BY MR. SOLA: (continuing)

4 Q. Can we look at the last enclosure, the last two pages.
5 Where did you -- this says, "Notice to furnishers of
6 information, obligations." Where did you obtain that?

7 A. This was part of the template letter from -- I think it's
8 called IdentityTheft.org, but it's the FTC's website.

9 Q. Why did you include it?

10 A. It was part of their instructions to include it, and yeah.

11 Q. All right. Did you get a response to that August letter?

12 A. No.

13 Q. Are you sure you mailed it?

14 A. Yes.

15 Q. And what kind of mailing did you make?

16 A. So in New Zealand I was using a service called Letter
17 Stream, which would send letters for me. It would upload PDFs
18 and they would print it and put it in envelopes and send it.
19 But since we were back in the United States, to save money,
20 I'd just start mailing things myself.

21 Q. I'm sorry?

22 A. Mail things myself, like print it out at home and put it
23 in the mail.

24 Q. Did you do regular mail or something different?

25 A. No. I went to the post office and did the thing where

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1 they give you a receipt with a number. But I went back to
2 Letter Stream after this set of mailings I did because I lost
3 the receipt, because it looks like any other receipt.

4 Q. Now, in August, while you're working on this letter and
5 trying to address Wells Fargo, was your daughter going to
6 enroll -- your daughter, Farah, going to enroll in school?

7 A. Yes.

8 Q. And did working on the Wells Fargo program affect your
9 ability to participate in that?

10 A. Yes.

11 Q. Could you explain that?

12 A. So she had been out of school as we sailed, and then the
13 year before that she had a big surgery and was out of school.
14 So we were enrolling her in school for the first time in a
15 long time.

16 With a child in special education, there's a ton of
17 personal work to make sure they're safe and all their needs
18 are met and a lot of meetings and negotiations with the
19 teacher and therapist, and even the nurse wants like a seizure
20 plan. Even the cafeteria wants an eating plan to make sure
21 she doesn't choke.

22 Q. So how did that affect your ability to participate in that
23 process?

24 A. It's -- it's a -- sorry. I don't want to cry. It's just
25 a horrible process because -- like we love her and we accept

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1 her as whoever she is and we forget she's disabled and we
2 don't think about it, and as far as we're concerned, she's
3 perfect. But to do this kind of thing, we're breaking down
4 all of the things that are wrong with her, and it's just a
5 huge emotional load, but it is also one of those times we have
6 to step up as parents and negotiate strongly on her behalf,
7 like represent her interests with the school as we're pushing
8 for more -- even silly things: If there's a fire, is she
9 going to be left at the top of the stairs, things like that.
10 There's just a lot of details.

11 So usually with all those life things with my -- with
12 my wife and I, we try to share those as much as possible, so
13 no one person is burdened by this emotional load. But I was
14 caught up in, you know, figuring out what to do next, and I
15 just wasn't able to spend as much time helping my wife do
16 that. So I felt like -- like I wasn't being the kind of
17 person I want to be. I always aspire to be like -- just to
18 try to do everything.

19 Q. And do you attribute your not being able to be the person
20 you want to be to spending time on the Wells Fargo issue?

21 A. Yeah.

22 I mean, I felt like I was doing everything right, and
23 I kept -- and I didn't know what to do next, and I didn't want
24 to hire another lawyer. So I just spent a lot of time like
25 reading about what you can possibly do and, you know,

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1 thinking, "Oh, well, what if I try to send this documentation
2 or this?" I just didn't know.

3 So I'm sorry. I rambled and I got lost in what I was
4 talking about.

5 Q. Thank you.

6 So let's look at Exhibit 14. Now, what is this?

7 A. This is an e-mail that I sent to my neighbor, who is an
8 attorney. She's just a couple doors down, and she has a sign
9 out that says she's an attorney.

10 Q. And what's the heading?

11 A. "Help write a letter with identity theft."

12 Q. And what are you asking her to help with? Well, first,
13 what are you informing her about?

14 A. I said, "I'm your neighbor a couple houses down. My
15 identity was stolen. It's a very cut-and-dry case. The
16 police caught the gentleman and he pled guilty. I have a
17 26-page police report that goes into a ton of detail. We were
18 out of the country from 2015 to 2017, and all these accounts
19 were created in the middle of 2016."

20 I go on to say, "I've been writing a lot of letters
21 to clear up our credit. Most creditors have taken this off
22 our report. A few have not. A few have sent the accounts to
23 collection agencies even after I have notified them."

24 Q. Okay. Slow down a little.

25 A. Sorry.

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1 Q. Then the next paragraph, what does that say?

2 A. "Notably, Wells Fargo Dealer Services. The gentleman
3 bought a BMW in my name, which the police returned to them.
4 That seems like a slam dunk, but they reported the car loan to
5 the credit reporting agencies. I wrote a dispute letter to
6 them with 30 pages of information, and they replied with a
7 form letter that after their investigation, the information
8 they are reporting to the credit bureaus is accurate."

9 And then I said, "I'm kind of at a loss for what to
10 do next." Then I ask her if she wants to help me write the
11 letter.

12 Q. And then did you get a response?

13 A. Yes.

14 Q. What did she say?

15 A. She said it's not her area of practice and that I should
16 contact a bankruptcy lawyer.

17 Q. What did you think about contacting a bankruptcy lawyer?

18 A. It's kind of demeaning. I don't know. I didn't seriously
19 consider bankruptcy as an option, but I just felt like this is
20 not -- yeah, this is not at all what we would do.

21 Q. All right. Could you turn to Exhibit 15. And what is
22 Exhibit 15?

23 A. This is a letter that I wrote to Wells Fargo on
24 November 3rd.

25 Q. All right. And then do you indicate -- what do you

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1 indicate after the "regarding" or in the "regarding" line?

2 A. "Identity theft, fourth notice."

3 Q. And why are you sending this letter?

4 A. After -- I think this is the letter where I attached even
5 more information. I can't remember. But, yeah, I wanted to
6 try again, so --

7 Q. Did you feel you were being persistent?

8 A. Yes.

9 Q. All right. And then I know you indicate in the first
10 paragraph what your dispute is, but then if we -- let's scroll
11 down a little more, and now it looks like the chronology is
12 even longer, because you enter your August letter. Why are
13 you putting that in?

14 A. I felt it was important, again, to whoever this arrives at
15 and sees it, then they can just quickly read the story. So I
16 started putting stuff in bold and shorter sentences and more
17 clear what the timeline has been.

18 Q. I see. You changed the length of your sentences?

19 A. Yes.

20 Q. Why?

21 A. I couldn't understand how they were concluding that this
22 this was identity -- that this was my account. So I was kind
23 of at a loss, thinking, well, maybe people are just busy and
24 not reading. I don't know. I just thought -- I was trying to
25 make it as clear as possible.

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1 Q. All right. And why did you put some words in bold print?

2 A. I was just thinking like, okay, maybe these people are
3 overworked and -- I don't know. I wanted it like they'd
4 glance at it and they don't have this wall of text at them.
5 They just see key phrases that pop out that say, you know, my
6 identity was stolen.

7 Q. Okay. You mentioned the identity thief was caught and
8 prosecuted -- I see how you bolded "plead guilty" -- and
9 sentenced.

10 The next sentence, why did you explain you were out
11 of the country when the fraudulent accounts were created?

12 A. I was trying to think of other ways that I could prove to
13 them that I didn't buy a car in San Diego, you know. And then
14 one of my ideas was like, you know, I wasn't there, you know.
15 I wasn't in the United States that whole year.

16 Q. Now, I notice it says, "I was sailing my yacht between the
17 Caribbean and New Zealand." That sounds like a -- you know,
18 I've got to be honest. It sounds like it's not entirely true.

19 A. Yeah. That's like calling our car a limo or something. I
20 thought, okay. If I've got someone's attention, it will be
21 even more -- like this guy sounds kind of rich or something,
22 you know. Why would he steal a car?

23 Q. I see. You thought it might make them take your dispute
24 more seriously?

25 A. Yeah. I was just trying to do whatever I could.

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1 Q. All right. Then let's go to -- let me see the bottom
2 paragraph.

3 All right. You mentioned the Fair Credit Reporting
4 Act. Do you see that?

5 A. Yes.

6 Q. And how did you learn about the Fair Credit Reporting Act?

7 A. It probably started with those two pages on the end of the
8 letters, but I had also read a lot online, just trying to
9 figure out what I could possibly do, and I read about that.

10 Q. You read about it on a website?

11 A. Yeah, some -- I probably initially heard of it through the
12 FTC website, but then I wandered all over the place.

13 Q. And why did you decide to put that into your letter?

14 A. I'm sorry. I'm not sure if this is a letter where I
15 started cc-ing their legal department.

16 Q. Let's look at the next page. Sorry. Let's look at the
17 next page, because it may indicate that, or the next page
18 after that.

19 A. Oh, yes. Sorry.

20 Q. Do you see the cc there?

21 A. Yes.

22 So my next strategy there was I'll start copying
23 their -- I looked up their legal registered agent, I think
24 it's called, for Oregon, and I think on some national level.
25 I'm not sure where I got the other address from. But I

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1 thought for some -- the people that I had been trying to deal
2 with hadn't been listening to me or hadn't been even reading
3 my letters or -- and then I thought, okay. I need to just try
4 more, different paths into this company. And maybe my letters
5 will get in front of somebody that's -- you know, that's going
6 to read it or that maybe has empathy -- I don't know -- just
7 maybe a little bit more time. I'm not sure.

8 So then your original -- I'm sorry. I'm rambling.

9 Q. That's okay. There's a lot behind this.

10 A. So --

11 Q. But my question was about why did you put in a reference
12 to the Fair Credit Reporting Act?

13 A. Oh, because I was including the legal contacts in the
14 letter, and I was imagining a lawyer person sitting at his
15 desk. And one way to, like, make them see that this is not
16 just, you know, I'm complaining about something minor, you
17 know, some minor customer experience or something, was to try
18 and be like, "Hey, look, here's a law that I think you're
19 breaking."

20 Q. All right. But you're not a lawyer, are you?

21 A. No.

22 Q. And did Wells Fargo fix the problem after they got this
23 letter?

24 A. No.

25 Q. Now let's look at page 2. Let's go to the very top, just

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1 to make sure.

2 Okay. Then what is that section with Equifax?

3 A. This is where Wells Fargo is -- this is what they're
4 adding to my credit report.

5 Q. All right. And why did you include that?

6 A. Just to make it more obvious or more end to end, like this
7 is -- okay. Here's what we're doing. And we're
8 actually -- we're actually reporting this to Equifax. This
9 isn't, like I said, some thing that's wrong internally, you
10 know, like --

11 Q. All right. Let's go to page 4. Now, this is -- well,
12 what is page 4?

13 A. That was my other idea, was like if I could prove some
14 other way, like -- you know, they didn't -- apparently didn't
15 listen to the police, you know, to the district attorney, I
16 mean, to all these government people. I just didn't know what
17 was going on. So I thought, okay. I'll just try to prove
18 that I was out of the country that entire year.

19 Q. And then you -- let's go to the next page. And what is
20 that?

21 A. That's the identity section of my passport, the first page
22 of it.

23 Q. And then what is below that?

24 A. It was then several pages of stamps. I just wasn't sure
25 how to do it, so I scanned all the pages with stamps that were

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1 relevant, and then I made the table that was on the page
2 before. It was like, "Go to this page and you'll see me
3 stamping out of this country, and go to this page and you'll
4 see me stamping into this country."

5 Q. So let's go to the next page. So these stamps, what are
6 they indicating?

7 A. Oh, when you enter or leave a country, especially by
8 sailboat, because it's not like an airport, often you're not
9 on the computer, it's kind of like you're -- they use stamps
10 to say when you arrived and left.

11 Q. And so this was to prove that you weren't in the U.S.
12 buying a car at the time they said you were?

13 A. Yes.

14 Q. All right. And then let's go to the -- well, those
15 cc -- we don't need to go back. Did you send copies of the
16 letter to them, too?

17 A. Yes.

18 Q. And then were there more attachments?

19 MR. SOLA: Let's look at the next attachment.

20 BY MR. SOLA: (continuing)

21 Q. Okay. Just briefly, what is this?

22 A. That's the original letter that Mr. Charne sent to Wells
23 Fargo, I think at this point over a year ago.

24 Q. Why did you include that?

25 A. Again, just to make it that it did land on someone's desk

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1 who was going to pay attention to it. It was like proving the
2 timeline that I put on the first page, where it's like, you
3 know, "Here's about Mr. Charne contacting you on October 19th,
4 2016. This is what happened."

5 MR. SOLA: And can we see the next attachment. Keep
6 going.

7 BY MR. SOLA: (continuing)

8 Q. All right. Why did you include Wells Fargo's -- well, let
9 me try to -- you included attachments that proved your
10 timeline; is that fair to say?

11 A. Yeah, and told the whole story. I thought especially
12 since I was sending it to random lawyers or random -- trying
13 to reach new people, I didn't know if everybody's computer
14 could pull up everything, so I thought, "Okay. Here's
15 everything that I have, and you can see for yourself."

16 MR. SOLA: And let's go to the next attachment.

17 BY MR. SOLA: (continuing)

18 Q. What is this?

19 A. That's the FTC identity theft affidavit.

20 Q. The same one you sent before?

21 A. Yes, that was attached to the letter from February.

22 Q. All right. And then did you also include the police
23 report farther down?

24 A. I'm sorry. I said February, but I think I sent that
25 letter in January.

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1 Q. Okay. And this is the police report?

2 A. Yes.

3 Q. Did you feel this was sufficient for Wells Fargo to then
4 remove it from your credit report?

5 A. I felt like it was way, way more than sufficient.

6 MR. SOLA: Can we look at Exhibit 16.

7 BY MR. SOLA: (continuing)

8 Q. All right. And what is Exhibit 16?

9 A. This is another letter. I believe I sent it on the same
10 day as the one we just looked at. It's dated November 3rd,
11 2017, and it's to Wells Fargo.

12 Q. And under the "regarding" section, what does that say?

13 A. Oh, "Request for records pursuant to Section 609 of the
14 Fair Credit Reporting Act."

15 Q. And what is that -- why are you making a request for
16 records?

17 A. In all my Internet time and research, I found that it was
18 my right, as a consumer, to write a letter like this and
19 request the internal business records of a company that
20 related to the fraudulent account.

21 Q. Okay. And why did you want the letters -- I mean, why did
22 you want the business records of Wells Fargo that related to
23 the fraudulent account?

24 A. I was really running out of ideas of what more I could
25 possibly say to them. And then I thought, oh, if I can get

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1 their internal records, it will show, you know, somebody
2 that's obviously not me. And then in the subsequent letter, I
3 could then point out, "Look, here's this other attachment, and
4 here's where the guy's signature doesn't look anything like
5 mine," whatever I'd find out.

6 Q. To get more -- all right.

7 And did you get a response to this letter?

8 A. No. They ignored this one.

9 Q. Did you have high hopes for this letter?

10 A. Yes. I thought every time I came up with a new trajectory
11 or way, I kind of -- yes, I was hoping that it would work.

12 Q. You thought it was a new tack that might work?

13 A. Yes.

14 Q. And how did it feel not to get any response at all to
15 this?

16 A. Kind of dehumanizing and sad. With each of these things,
17 it's like a little packet of yourself, like you're trying your
18 best to communicate with somebody. And it's arriving
19 somewhere and, you know, who knows what happened to some of
20 these letters that I sent. They just didn't -- you know, are
21 they intentionally just ignoring this kind of letter or did
22 someone click the wrong button again or something?

23 THE COURT: Why don't we take our mid afternoon
24 recess at this time.

25 Members of the jury, we'll be in recess for about 15

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1 minutes. Jennifer will escort you out. Remember the
2 precautionary instruction. I'll see you in about 15.

3 (The jury leaves the courtroom.)

4 THE COURT: Fifteen minutes.

5 MR. PETERSON: Thank you, Your Honor.

6 (A recess is then taken.)

7 (The Court, counsel, the parties, and the jury
8 reconvene.)

9 THE COURT: Be seated. Good afternoon. Welcome
10 back.

11 You may proceed.

12 BY MR. SOLA: (continuing)

13 Q. Would you look at Exhibit 17.

14 What is Exhibit 17?

15 A. This is a dispute letter that I wrote to Equifax about the
16 Wells Fargo account on November 3rd.

17 Q. All right. And why did you begin a dispute with Equifax?

18 A. I'd read that that was another set of options that I had.
19 And I thought maybe Wells Fargo's internal, like, machinery,
20 if I disputed through Equifax, it would end up with somebody
21 else, you know, at their desk.

22 Q. So you thought this might be effective?

23 A. Yes.

24 Q. And did you make other disputes to Equifax over the next
25 couple of months?

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1 A. Yes.

2 Q. And what were the results to those disputes?

3 A. Wells Fargo denied all of them.

4 Q. Would you look at Exhibit 18. What is Exhibit 18?

5 A. This is the letter that I received from Wells Fargo on
6 November 21st.

7 Q. All right. And what did you understand this was in
8 response to?

9 A. To the November 3rd letter that I had sent them.

10 Q. The dispute letter?

11 A. Yes.

12 Q. And what does the first paragraph say?

13 Well, I'm sorry. Go ahead.

14 A. "We received your affidavit regarding the Wells Fargo
15 Dealer Services account listed above and your claim that this
16 is a fraudulent loan. However, the affidavit does not include
17 all the needed information."

18 Q. And then under what you need to do, read that sentence.

19 A. "Before we can proceed with our investigation, we will
20 need to receive a copy of your Social Security card."

21 Q. All right. And what were your feelings upon receiving
22 this letter?

23 A. Just extraordinarily like -- I'm sorry. I said "pissed"
24 before, and that was the wrong word, and now I'm drawing a
25 blank. That, but also sad, like it just -- it didn't feel

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1 like anything I was doing was working.

2 Q. Now, what about the language, "Before we can proceed with
3 our investigation"? What did you understand that to mean?

4 A. That they hadn't even made an attempt to read my letter
5 or -- I mean, to look at this, like, as me, the person living
6 in Sellwood and, you know, them, as another individual
7 somewhere in North Carolina or wherever, but at an office,
8 yeah, that they weren't even trying.

9 Q. Now, do you remember you got a letter in February,
10 February 15th, I think, 2017, from Wells Fargo?

11 A. Yes.

12 Q. Do you recall, did they ask for your Social Security card
13 then?

14 A. No.

15 Q. Throughout the rest of 2017, in all your communications
16 with Wells Fargo, did they ask for your Social Security card
17 then?

18 A. No.

19 Q. Did you have your Social Security card?

20 A. No. I thought it was in the basement somewhere in some
21 box of all papers, and I tore it apart and just could not find
22 it.

23 Q. All right. Did you have any manifestations of your
24 feelings when you saw this letter?

25 A. It felt like being kicked in the gut. I mean, it's like

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1 just sick, in a way. I -- I felt like I was just -- they
2 were -- no matter what I tried, they were blowing me off.

3 Q. So you saw this as blowing you off?

4 A. Yes.

5 Q. Did you think Wells Fargo needed your Social Security card
6 to determine if the account was the result of identity theft?

7 A. Not at all.

8 Q. Why not?

9 A. I mean, so many reasons. They knew me as a customer.
10 They were sending this letter to an address that they sent
11 other correspondence to as an accountholder. They had seen my
12 passport. They'd seen two -- what's it called -- notarized
13 documents that were notarized by me that were attached
14 attached to the letter. They talked to the police. I'm
15 forgetting. But it just -- oh, and I felt like I proved that
16 I was out of the country. It was like, how much more can I
17 tell you that this is fraud and not my account?

18 Q. And who you were, right?

19 A. Oh, yes. Sorry. I got lost.

20 Q. Do you recall if any other creditors requested your Social
21 Security card?

22 A. None.

23 Q. Would you look at Exhibit 19. What is that?

24 A. That's an e-mail that I wrote to Mr. Charne, who had
25 previously tried to help me resolve the identity theft.

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1 Q. Why were you going back to Mr. Charne?

2 A. Well, I didn't want to, but I felt like I really have no
3 idea -- I mean, I felt, like, what I could do. I just felt
4 stuck in some, you know, maze or labyrinth that they had made
5 up.

6 Q. I'm sorry. Did I cut you off?

7 A. No. Sorry.

8 Q. Why didn't you want to go back to Mr. Charne?

9 A. He was extraordinarily expensive.

10 Q. So your letter has a title. What is that?

11 A. "Help with identity theft letter."

12 Q. So what were you asking him to do?

13 A. I thought, like, there was some special legal words he
14 could use or argument or special numbers of sections or laws
15 or something that would make them like actually take a look at
16 it instead of, you know, click "ignore" or whatever they were
17 doing in their internal systems or that he'd know how to reach
18 someone there that would be able to help me.

19 Q. All right. And then the third paragraph, the first
20 sentence about Wells Fargo, what do you say there?

21 A. "Wells Fargo Dealer Services is being willfully stupid."

22 Q. Why did you say that?

23 A. I didn't know how else to describe it. It just felt
24 like -- it didn't -- to me it was so ineffective that I
25 started to wonder, like, is this just -- I mean, is this like

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1 an accident or is this part of some plan they have? I don't
2 know. It was just like a degree of stupidity, you know.

3 Q. What did you feel when you wrote this e-mail and said
4 that?

5 A. I was still the P word. Sorry.

6 Q. Can you use another word?

7 A. Oh, angry.

8 Q. Then did Mr. Charne respond?

9 A. Yes.

10 Q. And what did he say?

11 A. I believe he suggested a handful of changes.

12 Q. I'm sorry. I shouldn't ask you a question when I'm not
13 sure what was in the document.

14 A. I think it's farther down. I don't know actually.

15 Oh, here he said, "I'm sorry to hear this horrible
16 ordeal is going on. I've read through the letter and
17 attachments, would not change a word, except to add a demand
18 at the end of the letter that this be resolved and any
19 negative report to any credit reporting agency be removed and
20 that Wells Fargo respond to you within 14 days minimum."

21 Q. Did you also do more research to figure out what to do?

22 A. Yes. I spent a lot of time. Even in the middle of the
23 night, I'd wake up and look on my phone, to try to figure
24 out -- I mean, yeah. I was just at a total loss of what to
25 do.

Sponer - D

1 Q. And did you still have concern about what Wells Fargo
2 might do to collect?

3 A. Yes. I didn't know where I was in their machinery. And
4 at this point, when I started to feel like it was willful
5 stupidity, that they had some ulterior motive, that this was
6 like -- they're not admitting that it's a fraudulent account
7 for some purpose.

8 Q. What kind of purpose?

9 A. I thought that they would try to extort money -- "extort"
10 is the wrong word. I'm sorry. But like take it out of my
11 account or send it to a collection agency and sue me
12 or -- yeah, that.

13 Q. Would you look at Exhibit 20. And what is that?

14 A. This is a letter from Equifax dated November 30th.

15 Q. Now, would you look at -- well, what is this in response
16 to?

17 A. One of my disputes with them.

18 Q. And would you look at -- there is a section called "In
19 This Situation." Do you see that, the first three bullet
20 points?

21 A. Oh, yes.

22 Q. And what are you understanding they're indicating they're
23 going to do with your dispute or they've done with your
24 dispute?

25 A. That they contacted Wells Fargo, asked them to verify it.

Sponer - D

1 Equifax sent them the information that I provided to them to
2 consider as part of their investigation. And then Equifax had
3 asked Wells Fargo, you know, to investigate it and tell us
4 what this is.

5 Q. And then can you turn to page 3 of this Equifax response?
6 And do you see the results here?

7 A. Yes.

8 Q. And what does it say the results are in regard to the
9 Wells Fargo account?

10 A. "We verified that this item belongs to you."

11 Q. And what did you understand that meant?

12 A. They are continuing -- they were continuing to say that
13 this was my account.

14 Q. Who is "they"?

15 A. Wells Fargo.

16 Q. Okay. And then they indicate, "You can contact Wells
17 Fargo"; is that right?

18 A. Yeah. It says, "If you have additional questions about
19 this, contact Wells Fargo."

20 I think that's the same address -- I don't know if
21 that's the same address. It's the same city.

22 Q. All right. And what was your reaction to getting these
23 results?

24 A. Just defeated. I mean, because this was -- if you
25 remember, I don't know what number of avenues I tried to reach

Sponer - D

1 someone at Wells Fargo and resolve this, because I tried
2 through their -- you know, like their legal department, their
3 other corporate contact, the fraud department. And now I was
4 trying this other way to try and get to somebody there,
5 through telling Equifax.

6 And then my understanding of this, the Equifax thing,
7 is that they then ask Wells Fargo. And I thought, well, maybe
8 they will pay attention if it comes from Equifax, like it
9 arrives at a different person's desk or something. But it
10 just wasn't working. I mean, this didn't work either.

11 Q. And then would you turn to page 7. And what do you see on
12 that page?

13 Oh, first, what is this page from?

14 A. Oh, whenever I had made a dispute with Equifax, they would
15 send me, like, that cover section and then, like, my credit
16 report at that moment.

17 Q. All right. And so this is part of your Equifax credit
18 report?

19 A. Yes.

20 Q. And what's on your Equifax credit report?

21 A. That I stole a car. I mean, here's Wells Fargo saying,
22 you know, I took \$29,419 from them and -- yeah.

23 Q. And you mentioned a \$29,419. Does it also indicate a
24 balance?

25 A. Yes. \$11,456.

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1 Q. And does it indicate an amount past due?

2 A. \$11,456.

3 Q. And what else does it indicate under "status," on the left
4 side? Do you see that?

5 A. "Charge-off."

6 Q. All right. Let's go back to page 3. And in the second
7 paragraph of the results, it refers to several different
8 accounts. I don't want to read it all, the numbers, but do
9 you see, what does it tell you about those disputed accounts?

10 A. Those are accounts that I disputed and have been deleted
11 from my credit report.

12 Q. All right. Had you made disputes to those companies?

13 A. I'm not clear. It's not clear to me. I think I made
14 these disputes with Equifax.

15 Q. All right. And now they're gone from your report?

16 A. Yes.

17 Q. Would you look at page 8.

18 A. You know what? I'm sorry. I'm wrong.

19 I don't know if it matters, but the Macy's, I
20 recognize Macy's specifically, because they're the ones I
21 wrote to directly, and they wrote back, you know, in about a
22 month, that they took it off. So I think I'm wrong. At least
23 Macy's, I disputed directly with them early in January,
24 whenever that was, as part of the first -- the same letter I
25 sent to Wells Fargo.

Sponer - D

1 Q. So you disputed -- with some companies you disputed
2 directly and/or through Equifax --

3 A. Yes.

4 Q. -- like you did with Wells Fargo?

5 A. Yes.

6 Q. And these accounts -- Best Buy, Kohl's, Office Depot, and
7 Macy's -- were not on your Equifax report at this time that
8 Wells Fargo was on, right?

9 A. Yes.

10 Q. Look at page 8, please. And there's a section where it
11 says a request for your credit history is called an inquiry.
12 Do you see that?

13 A. Yes.

14 Q. And what do you understand an inquiry is?

15 A. That's when a company asks to see a copy of your credit
16 report.

17 Q. And would you look at page 11 and the fourth item down.

18 A. That's my home insurance company, Foremost Property and
19 Casualty.

20 Q. And what date did they see your credit report?

21 A. March 6th, 2017.

22 Q. And how did you feel about that?

23 A. I felt like that's the reason my home insurance got super
24 expensive.

25 MR. PETERSON: Objection, relevance.

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1 THE COURT: Objection sustained.

2 MR. SOLA: I'll withdraw the --

3 BY MR. SOLA: (continuing)

4 Q. Did you have any kind of emotional or kinds of distress
5 knowing that Foremost Insurance had seen your credit report
6 with the Wells Fargo account on it?

7 A. Yeah. It was embarrassing because, like I said, you know,
8 there's this big black mark on my credit, and my home
9 insurance company had seen it.

10 Q. Now, around this time -- well, or any time, did you want
11 to talk to Wells Fargo on the phone?

12 A. No.

13 Q. Why not?

14 A. My experience with dealing with large companies over the
15 phone is that usually the person who answers isn't capable of
16 helping you with something complicated. And, also, I've had
17 where they just don't do what they're going to say, so I
18 thought I should do it in writing.

19 Q. What about the fact that the Wells Fargo account had
20 indicated collection. Did that dissuade you from telephone
21 communications?

22 A. Yeah, definitely. I'd received mean collection calls from
23 other creditors. And I just didn't want to have -- I didn't
24 want to call Wells Fargo and be treated like a criminal.

25 Q. I'm sorry. I lost my place.

Sponer - D

1 Could you look at Exhibit 22. And what is this?

2 A. This was another letter to Wells Fargo.

3 Q. And what's the date?

4 A. December 1st.

5 Q. And was this in response to some other letter from Wells
6 Fargo?

7 A. Yes. This was to the letter where they said they wouldn't
8 do anything until they saw my Social Security card.

9 Q. And why did you send this letter?

10 A. Sort of desperation. I don't know. I mean, to get it off
11 my credit report, but like, you know -- yeah, I was just
12 trying again.

13 Q. And after you mentioned their letter asking for your
14 Social Security card and telling them you don't have it, you
15 say, "However, I believe your request is unnecessary and in
16 bad faith. You have more than enough information to
17 investigate this fraudulent account."

18 Why did you say that?

19 A. That's what I completely believed, I mean, that it should
20 have been so obvious. And I'd written them so many letters.
21 Yeah, I was just trying to be more plain and straight.

22 Q. What do you mean by "bad faith"?

23 A. That they weren't even trying at all, like somehow I was
24 landing on all these different people's desks there or like
25 all these different ways of trying to get -- get them to do

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1 the right thing or whatever, and -- yeah, I just like -- I
2 mean, it wasn't -- they weren't reading -- I just didn't see
3 how it was possible that they were still saying it was my car.

4 Q. All right. And then you state that they have several
5 sufficient ways to verify your identity. You don't have to
6 read the list. But why are you telling them all the different
7 ways they can verify your identity?

8 A. Because I didn't have my Social Security card, and I was
9 just saying, "But you really don't need it. I mean, you've
10 got so many ways to know this is me writing to you."

11 Q. Then the paragraph, "Therefore" -- I won't read it, but
12 you mention that you don't think they're resolving this in
13 good faith, with standard business practices, or the statutory
14 requirements of the Fair Credit Reporting Act.

15 So I think since you said "bad faith" above, is that
16 what you mean there, by "not in good faith"?

17 A. Yes.

18 Q. What about "standard business practices"? What did you
19 mean when you said you didn't think they were attempting to
20 resolve it with standard business practices?

21 A. I thought that there was like minimum -- I don't
22 know -- standards of decorum or, like, expectations for a
23 company, and that they weren't meeting those.

24 Q. And then the statutory requirements of the Fair Credit
25 Reporting Act, is that something you learned on the FTC

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1 website?

2 A. Yeah. And I thought that since, again, I was cc-ing their
3 lawyers, I thought maybe that would pop out to them and they'd
4 pay attention.

5 Q. The next line is "I have suffered material damages from
6 this identity theft."

7 Why did -- well, first, why did you include that
8 sentence?

9 A. To say that this is not just some weird paper game that
10 they're playing, that it was actually hurting my family.

11 Q. At this point in time, what would you say was the most
12 acute damage? We're at December 1st. Is there something that
13 stood out more than the others, or is it just the things that
14 we've been discussing?

15 A. What I remember from this period was not sleeping well and
16 just getting worn down because I wasn't sleeping well for, you
17 know, more than one day at a time, and then just not -- yeah,
18 just not being there for my family as much as I want to be,
19 not -- and then there was -- I felt like I was just -- like
20 this was super important to resolve. I mean, it was very
21 important. I mean, it's like my family's finances, you know.
22 But I also felt like I had this other huge responsibility to
23 spending time with Farah and, like, being -- giving her enough
24 attention.

25 Q. Let's talk about the not sleeping well. Can you describe

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1 what that was? You know, some people can't get to sleep.
2 Some people sleep and then wake up.

3 A. Yeah. For me, it's like I wake up at 4:00 and my -- Farah
4 would get on the bus at, like, 6:00. And I just couldn't go
5 back to sleep and then couldn't sleep in because I would have
6 to -- I'd have to -- she needs help getting dressed and up and
7 in the shower. And she has to -- feed her breakfast and then
8 clean up after breakfast, so it's this whole big process.

9 Yeah. I'm sorry I'm rambling again, but it was
10 just -- yeah, I ramble too much.

11 Q. You're a computer guy, not a public speaker; is that fair?

12 A. Yeah. I'm a total nerd.

13 Q. So then do you attribute your trouble sleeping to your
14 concern about the Wells Fargo account?

15 A. Yes. I mean, they're the ones that made it so complicated
16 and hard. And the reason that I -- I mean, I had other
17 identity theft accounts, but, you know, Wells Fargo is the one
18 that kept denying me and made me try to figure out, okay, what
19 other possible way can I get to them or get them to say that
20 this is not my loan?

21 So, yeah, it's the one I thought about and it seemed
22 like the most important because it was for the largest amount,
23 and, you know, I believe it was the one that had been going on
24 for the longest.

25 Q. Okay. Most important because it was the largest amount

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1 and the longest and --

2 A. -- my bank.

3 Q. You mentioned "worn down." So can you explain to us how
4 you felt worn down, what that meant?

5 A. Well, both like with my sleep and also with just, like,
6 willpower or initiative or like an ability to, like -- to do
7 what I need to do every day. And the sleep affects that.

8 It's like -- you know, I've learned like spending,
9 you know -- you know, time at sea, like someone always has to
10 stay awake and drive the boat. It's just critical not to get
11 worn out. You have to pace yourself so that -- but with this
12 situation, it wasn't like I was choosing to think about Wells
13 Fargo or whatever. I mean, it was like I wasn't choosing to
14 stay up driving the boat longer so that I would not sleep as
15 much, you know.

16 Q. All right. Let's look at page 2 of that.

17 And now on this page, you say, "To summarize this
18 case so far" -- and then if we could scroll down a little bit,
19 we see what looks like a detailed itinerary or chronology of
20 the events. Why did you put that in?

21 A. I switched to a numbered format for all the things that
22 had happened and even shorter sentences, more bold. And,
23 again, I was trying to just reach someone there that would
24 treat me like a person or give this, you know, enough
25 attention to be like -- that they would be able to look at it

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1 and easily understand that they were making a big mistake.

2 MR. SOLA: All right. Could you scroll down just a
3 little more, just to see -- and then turn to the next page.

4 BY MR. SOLA: (continuing)

5 Q. All right. And then you gave them more personal
6 information; is that right?

7 A. Yeah. I just started to include every -- whatever I could
8 think that they would need.

9 Q. Would you turn to page 5. And what is that?

10 A. That's the letter from Wells Fargo, the November 21st
11 letter, that said they need my Social Security card.

12 Q. Why did you include that?

13 A. Again, just to make it like a complete thing, so that -- I
14 felt like if I could reach someone there that could just make
15 a decision or actually carefully read it, and if they felt
16 like they had everything, they could do it, they could click,
17 "Take this off of Matt's credit report and take it out of
18 collections." That was my idea.

19 Q. Could you look at the next page.

20 This says "credit card charges overseas," and it
21 looks like, again, a chronology. Why did you put that in?

22 A. Well, they ignored my request for records. And then I was
23 thinking, oh, I have a credit card, an ATM card with them, and
24 these are line items from their own credit card and ATM card
25 that show me buying groceries in Tahiti on the same day that,

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1 you know, they're saying to the credit reporting agencies that
2 I bought a car in San Diego.

3 Q. I see. But actually they already had this information,
4 right, because these are your credit card charges and Wells
5 Fargo is your credit card, right?

6 A. Yes.

7 Q. Then if we look at the remaining documents, just tell us
8 what those -- well, passport pages, I think you discussed that
9 in your last letter, right?

10 A. Yes.

11 Q. And then a dispute --

12 A. Yes. That's the letter that James Charne had written to
13 them over a year ago.

14 Q. That one is to Equifax, though, right?

15 A. Oh, sorry.

16 Q. All right. Without going through all these, do you have
17 any estimate about how long it took to write this letter and
18 gather all the information, put it together?

19 A. No.

20 I mean, there's like the physical act of typing it
21 and editing it. But it's sort of like programming, where you
22 have to know what to type first or it's not effective. So I
23 spent a lot of time trying to figure out what tack to take.
24 So, no, I don't know how much time I spent on that.

25 Q. Okay. A substantial amount of time?

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1 A. Yes.

2 Q. It seems like you're the kind of person who put a lot of
3 time into all these letters, because you're trying to say the
4 thing that would get it fixed?

5 A. Yeah. This was important to me, and I was trying to the
6 best of my ability. I mean, I really throw myself at, you
7 know, work problems, but even -- but, you know, also these
8 types of, to me, like personal finance are important problems.

9 Q. You referred to finances earlier. You said, "This is our
10 family's finance. That's why it was so important."

11 Are you the primary breadwinner?

12 A. Yes. My wife doesn't remember that when we got married, I
13 said she would work and I would play with the kids. So, yeah,
14 I'm the person that makes money, I guess the most -- or the
15 majority of our money.

16 Q. Let's look at Exhibit 23. And what is this? Well --

17 A. This is a letter from Wells Fargo on December 5th.

18 Q. All right. And does it indicate they received
19 correspondence from you?

20 A. Yes. It says this is our response to the letter that we
21 received on November 10th.

22 Q. And then under "Regarding your concerns," could you read
23 that first sentence?

24 A. "We have forwarded your request to our Wells Fargo Dealer
25 Services fraud department."

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1 Q. And what was your feeling when you read that?

2 A. Just kind of crushed and sad. I mean, I felt this -- to
3 me, like figuring out what's going on inside, trying to think,
4 like, this is another person that got my huge letter and then
5 clicked, you know -- that didn't read it or take a look at it
6 carefully and said, "Oh, this is about a fraud thing. Let's
7 send it back to the fraud department." And at this point I
8 had been dealing with the fraud department for over a year.

9 Q. Did you feel progress was being made?

10 A. No. This was like -- yeah, it was like Groundhog Day or
11 going in circles or something.

12 Q. Did you see this as a form letter?

13 A. Yes.

14 Q. And how did you feel about getting another form letter?

15 A. It's -- it's just more dehumanizing and disempowering.

16 You know, I'm just imagining, okay, this is
17 another -- another opportunity I have for someone to do the
18 right thing or to pay attention to what I'm writing or to
19 bother to read it. And they just, you know, probably typed in
20 my address to some form and then clicked a button and then
21 some printer somewhere printed it out.

22 Q. Okay. We've looked at quite a few letters from you and
23 back from Wells Fargo in November, December. So all that time
24 that you're spending doing this, what are you not doing in
25 your life that you would want to be or would be doing?

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1 A. I just wasn't spending enough time with Farah, and she
2 takes a lot of care. And her whole experience of people is
3 being present with them and them being -- them being on the
4 same, like -- I don't know what you call it, like clear mind,
5 like moment with them. And, you know, with me caught up in
6 this, I just wasn't there with her.

7 And then there's all the physical stuff and just the
8 workload of having her, because it's sort of like having
9 a -- I don't know. She's probably as much work as an infant,
10 but she's 16, so there's all this stuff all the time, like
11 taking her to the bathroom every 20 minutes because she's time
12 trained, and all these things.

13 So I just felt like I was missing out on all this
14 time with her. And we've always really -- I've really valued
15 the time I have with her, because medically, she's just
16 complicated. And we just -- we never know what's going to
17 happen or like -- with her.

18 Q. All right. And is that time you can get back?

19 A. No.

20 Q. Now, you mentioned every 20 minutes you'd have to check
21 with her or take her to the bathroom. Are there other things
22 that require almost constant attention in caring for Farah?

23 A. Yeah. We have to keep things out of her mouth. We have
24 to keep her -- I mean, she has sort of like a wheelchair that
25 we hacked together, because wheelchairs are expensive. It's

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1 just a folding office chair. And she's fascinated by the
2 basement. So I'm always -- in the back of my mind, I have to
3 check that the basement door is closed and locked.

4 And, I mean, there's like all these little things
5 that I'm aware of as part of being a good caregiver for her,
6 and keeping things off of -- just out of her reach that are
7 dangerous.

8 I got lost.

9 Q. So if you go to the computer and try to work for an hour,
10 then she's not monitored as she should be?

11 A. Yeah. And we worked for so long to get her toilet trained
12 and out of diapers, sometimes just because I was caught up in
13 figuring out what this -- what to do, I missed that. I mean,
14 I missed the time or the cue from her, kind of like a
15 nonverbal cue. And, you know, she's embarrassed, I feel
16 awful, and it's also just bad for her habits, because she can
17 get out of good habits.

18 Q. Does she understand when you're away why you're away?

19 A. No.

20 Q. What do you mean by that?

21 A. I just don't think she's bright enough to understand
22 things like that. So her experience is very much like what's
23 immediately -- the people immediately in front of her and,
24 yeah, so -- and for her being social in relationships is all
25 this, like, you know, immediate, close proximity level.

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1 Q. Would you look at Exhibit 24. What is Exhibit 24?

2 A. This is a letter from Equifax dated December 6th.

3 Q. And why don't we turn to page 3.

4 Well, first, why were you continuing to dispute with
5 Equifax the Wells Fargo account?

6 A. I didn't know what else to do.

7 Q. All right. And now we have the results on page 3. And
8 the second paragraph, what does that indicate?

9 A. "We verified that this item belongs to you. If you have
10 additional questions, contact Wells Fargo."

11 Q. And then the last paragraph, same thing, right?

12 A. Yes.

13 Q. Do you know why it's on there twice?

14 A. I'm not sure. I could only guess it's multiple disputes
15 they're talking about. I don't know.

16 MR. PETERSON: Objection, lacks foundation.

17 THE COURT: Sustained.

18 You'll strike that last portion of the answer. He's
19 not allowed to speculate why something may or may not be
20 there.

21 THE WITNESS: Sorry.

22 THE COURT: That's okay. He'll ask you another
23 question.

24 BY MR. SOLA: (continuing)

25 Q. Then let's look at the last part of that. It indicates

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1 Sprint, Kohl's, Best Buy, and indicates why they're not on
2 your file. Can you tell us why they're not on your file?

3 A. Because I disputed them, and those companies chose to read
4 my letter or chose to take enough of a look to decide that
5 it's fraud.

6 Q. And then the third paragraph says the disputed Verizon,
7 Home Depot, Macy's and Kohl's are not reporting. Why aren't
8 they reporting?

9 A. I believe for the same reason.

10 Q. That you disputed with them?

11 A. Yes.

12 Q. All right. How did you feel when you got these results
13 saying Wells Fargo was verified?

14 A. It was just more failure. And I kind of took it as a
15 personal failure, that I couldn't figure it out.

16 Q. All right. You just said "personal failure." That's
17 different than being upset or sad or the other. So what do
18 you mean by "personal failure"?

19 A. Just ineffective as a person or like, you know, just
20 unable to figure this out.

21 Q. So a reflection of your self-esteem? Would that be fair
22 to say?

23 A. Oh, yes.

24 Q. And I'm not sure if you said it. A problem solver, is
25 that a way you would describe yourself?

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1 A. Yes.

2 Q. And so this was one problem you couldn't solve?

3 A. That's correct.

4 Q. All right. Do you feel that Wells Fargo treated you
5 differently than other creditors that had fraudulent accounts?

6 A. Definitely, yes.

7 Q. And how did they treat you differently?

8 A. They didn't remove it from my credit report for however
9 long this was. And they asked for my Social Security card
10 that no one else did. And they sent me back letters that
11 said, "Yes, this is yours."

12 Q. Turn to page 7 of the Equifax report. And do you see the
13 Wells Fargo account?

14 A. Yes.

15 Q. And in addition to when you read the results saying
16 "verified," is there additional stress or other negative
17 feelings corresponding with seeing it in black and white on
18 your credit report?

19 A. Yes. It's -- I don't know. I felt like a criminal. I
20 felt ashamed and embarrassed that my credit report was that
21 bad with this really large loan.

22 Q. All right. Let's turn to -- well, why don't you look to
23 the first page.

24 Actually, let's just move on.

25 MR. SOLA: Exhibit 25, could we look at that.

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1 BY MR. SOLA: (continuing)

2 Q. What is Exhibit 25?

3 A. Oh, this is another letter from Equifax dated
4 December 13th.

5 Q. All right. And why did you get this?

6 A. It was them telling me the results of another dispute.

7 Q. All right. And let's look at page 3. And what are the
8 results from Wells Fargo?

9 A. "We verified that this item belongs to you. If you have
10 additional questions about this item, please contact Wells
11 Fargo."

12 Q. I know I've asked you this so many times, but how did you
13 feel when you saw this again December 13th or thereabouts?

14 A. I don't know. Like someone keeps kicking me. This was a
15 whole stupid situation that didn't have to exist.

16 Q. Anything else about your feelings at that time?

17 A. I think I already said helpless. I don't know. I just --

18 Q. Did you feel you had power over your credit information?

19 A. No. I mean, this is just -- yeah, I mean, Wells Fargo was
20 putting this thing on it, and I had no ability to take it off.

21 Q. Would you look at Exhibit 26. Do you recognize that?

22 A. Yes. This is a letter from Wells Fargo on December 14th.

23 Q. And what does the first sentence say?

24 A. "Contact requested about possible identity theft."

25 Q. And then what does the sentence under your name say?

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1 A. "We're writing to let you know you may be a victim of
2 identity theft, according to information provided by banker
3 connection."

4 Q. And what was your reaction to getting this letter?

5 A. More just going in circles with them, and also just
6 extremely frustrated that, you know, I wasn't getting
7 anywhere. But also just sad that like, to me, this is another
8 person at Wells Fargo that evidently was aware of my identity
9 theft that, you know -- and had chosen not to take
10 responsibility or to try to fix it for me, to treat me like a
11 person. So it's like, you know, somebody clicked, "Oh, send
12 him an identity theft repair packet," you know.

13 Q. Let's look at the next exhibit, or Exhibit 27. And what
14 is this?

15 A. This is -- I think I received both of these letters on the
16 same day. And this says, "We're sorry to learn you may have
17 been the victim of identity theft. To help you secure and
18 protect your identity, we are enclosing an identity theft
19 repair kit."

20 Q. And let's look at the next page. And it looks like it has
21 a repair kit with a resolution checklist. Do you see that?

22 A. Yes.

23 Q. And if we could just go through -- well, what was your
24 feeling about getting this document?

25 A. I felt like I was already doing all that stuff, and then

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1 they're telling me to do it and it would be fixed. And I'm
2 like -- and then it's like, I'm thinking, "Geez, guys, it's
3 been over a year and you haven't fixed it. I mean, your
4 own -- your own checklist isn't effective." But, also, again,
5 just going in circles and not being able to -- just not being
6 able to reach anyone there that would pay attention.

7 Q. All right. Just to note a couple of things on the
8 checklist, you indicated that you had already done these
9 things. First item, "Contact Wells Fargo," had you already
10 done that?

11 A. Yes.

12 Q. Next item down, "Contact the major credit bureaus," you
13 had done that?

14 A. Yes.

15 Q. Next, "Contact other creditors"?

16 A. Yes.

17 Q. Next, "File a report with the police"?

18 A. I felt like I triple-checked that, because the police
19 investigated and made a report for me.

20 Q. Okay. "Report the criminal activity to the FTC." I don't
21 know. Maybe you hadn't done that?

22 A. No, it's true, I hadn't done that.

23 Q. But you got their affidavit, right?

24 A. Yes.

25 Q. Next page, you had done that, "Continue to review your

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1 accounts"?

2 A. Yes.

3 Q. And then they're giving you this resolution worksheet.

4 Is any of this, in your opinion, going to help you
5 solve your problem at Wells Fargo?

6 A. No.

7 Q. You mentioned it affected your sleep. Were there other
8 manifestations you can think of beyond sleep and lack of
9 motivation?

10 A. I mentioned sometimes feeling sick to my stomach. And as
11 far as physical manifestations, I had headaches, but that was
12 rare. Yeah, that's it.

13 Q. Can you look at Exhibit 28.

14 MR. SOLA: And why don't you scroll back so we can
15 see the whole page.

16 BY MR. SOLA: (continuing)

17 Q. There's a few of these in here, but we'll just start with
18 the first one. It looks like -- well, what is it?

19 A. Is an e-mail from Equifax. Do you want me to describe it?

20 Q. Yeah. What are they telling you, in one or two sentences?

21 A. They've completed processing a dispute, and that I can go
22 and view the results online or wait for them to mail it to me.

23 Q. And if you can look through them -- well, they start
24 December 11th, right?

25 A. Yes.

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1 Q. And let's just go to the last page. And what date is
2 that?

3 A. January 9th.

4 Q. All right. So these notices cover about four weeks; is
5 that right?

6 A. Yes.

7 Q. Why were you getting these?

8 A. It's part of their computer that when I made a dispute,
9 they would send me an e-mail like this.

10 Q. And how did you feel about getting these frequent
11 reminders that your dispute results were available online?

12 A. It was just harder to put away this problem I was having
13 with Wells Fargo, because I kept receiving e-mails saying, you
14 know, "We've investigated it again."

15 Q. I'm sorry. I didn't hear the beginning of your sentence.
16 It was harder --

17 A. Oh, it was harder to put away this whole part of my life.

18 Q. All right. So these were reminders that you still had the
19 problem with Wells Fargo?

20 A. Yes.

21 Q. Would you look at Exhibit 29.

22 A. This is a letter from Equifax dated January 2nd.

23 Q. And are these -- why did you get these?

24 A. I think this is -- it's the results of the dispute.

25 Q. And let's turn to page 3 and look at the results. And

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1 what does the second paragraph indicate?

2 A. "We verified that this item belongs to you. If you have
3 additional questions, contact Wells Fargo."

4 Q. And then the paragraph above?

5 A. That lists accounts that I disputed that were no longer on
6 my credit report.

7 Q. Okay. Which ones are those?

8 A. Progressive, Sprint. I don't know what "phone" is. And
9 the other one doesn't have a name.

10 Q. So those -- those came off after your dispute?

11 A. Yes.

12 Q. And after you got -- let's go back to December. We looked
13 at your letters to Wells Fargo and their response on
14 December 5th, December 14th. And then in December did you
15 take some other action against Wells Fargo?

16 A. Yes. I was at even more of a total loss of what to do.
17 And I started looking for a lawyer to give me advice, to tell
18 me what to do next.

19 Q. And what did you do?

20 A. I searched around the Internet.

21 Q. No. I meant, did you sue Wells Fargo?

22 A. Oh, yes.

23 Q. And why did you sue Wells Fargo?

24 A. I didn't feel that there was any other way out of this.

25 Q. Any other way to what?

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1 A. To resolve my credit report and them saying that I stole a
2 car and possibly collected money.

3 Q. And then after you sued Wells Fargo, did you -- well,
4 let's look at Exhibit 30. What is this?

5 A. This is a letter that I received from Wells Fargo that's
6 dated January 30th, 2018.

7 Q. And then the first sentence, what does it say, after your
8 name?

9 A. "We have completed our research, and your identity theft
10 claim appears to be valid."

11 Q. And how did you feel when you got this?

12 A. I was like, who words their form letters with "claim
13 appears"? I mean, they're using like -- you know, not even
14 admitting. I mean, I don't understand it. But it's not
15 like -- it just seems like they're still kind of holding back
16 being honest and open.

17 Q. But was there some relief?

18 A. Oh, yes. Yeah, it was finally off my credit report.

19 Q. So you finally found something that worked: suing them?

20 A. Yes.

21 Q. Now, let's discuss some more about your damages. You're
22 claiming damage to your reputation. And so can you explain to
23 us how you feel your reputation was damaged?

24 A. They were basically lying about me and telling the credit
25 reporting agencies, and anybody that looked at the -- my

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1 credit report would see these wrong things that they were
2 saying about me.

3 Q. All right. You mentioned they were telling the credit
4 reporting agencies.

5 A. Yes.

6 Q. So who do you understand -- well, we know one was Equifax,
7 right?

8 A. Yeah. There's TransUnion and Experian.

9 Q. All right. And then other people that saw your report as
10 far as you know?

11 A. The insurance company. And then I don't know all the
12 companies that saw it, because I don't think it shows for
13 certain types of data sharing that the credit reporting agency
14 does.

15 Q. Now, before you had the identity theft problem, what was
16 your credit like?

17 A. It had no derogatory marks on it.

18 Q. Is that something you were proud of?

19 A. Yes.

20 Q. How did you achieve having no derogatory marks on your
21 credit?

22 A. I was just conscientious and I feel just responsible for,
23 like, paying bills and -- I don't know -- not buying cars and
24 not making payments and all those things.

25 Q. All right. Now, you mentioned your distress and some of

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1 the manifestations of that. So what time period would that
2 cover that you attribute to Wells Fargo?

3 A. Mostly from when I discovered that it was still on my
4 credit report, when I was in New Zealand. Before then, I kind
5 of thought Mr. Charne could handle it and it would just be
6 fine. But all the way through until, you know, they resolved
7 it.

8 Q. So would that -- New Zealand, I know you saw a report
9 November 9 from TransUnion.

10 A. Yes.

11 Q. And you don't know that you saw that report on November 9;
12 is that fair to say? It might have been later?

13 A. Yeah, definitely not. Because it took us almost a week
14 for us to sail from Fiji to New Zealand, and we were at sea at
15 that time.

16 Q. But would you say sometime in November you knew that it
17 wasn't getting fixed?

18 A. Yes.

19 Q. So November 2016, right?

20 A. Yes.

21 Q. Through January 2018?

22 A. Yes.

23 Q. And we've looked at a lot of documents here. So can
24 you -- I'm not going to ask you to tell us every time that you
25 were affected by this Wells Fargo, because I don't want to be

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1 here any later than we need to be, but were all these
2 documents that we've seen related to the stress you felt from
3 Wells Fargo?

4 A. Yes.

5 Q. Were there other things beyond these documents, other
6 events, research, or communications or thoughts in your mind
7 at other times that also were stressful because of Wells
8 Fargo?

9 A. Yes.

10 Q. And what about the 15 months that they said you owed them
11 the money and they wouldn't take it off your report? How
12 often were you concerned about that?

13 A. Well, we just didn't feel settled or like all of our
14 finances were in order. I mean, in a way it's like you feel
15 less safe, because you don't know when the shoe is going to
16 drop on you, the next part of their collections or whatever it
17 would be.

18 And then I got lost on -- talking about --

19 Q. Well, I said -- I'm not even sure I remember my question.
20 But was it a constant concern of yours that you had this on
21 your report and this debt that they said you owed?

22 A. Yes.

23 Q. Now, did you feel that spending all this time working on
24 the Wells Fargo problem and your thoughts about it kept you
25 from doing things with your family, other than the things with

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1 Farah that you've already mentioned?

2 A. I just felt like I wasn't being the kind of father I
3 wanted to be. I just -- I guess, you know, I didn't -- during
4 the intense parts of this, those years, since I wasn't as
5 energetic, I wasn't -- I'm normally the energetic one in the
6 family: "Hey, let's go to the park. Let's do all these
7 things." So there were a lot of, like, missed opportunities
8 to engage.

9 Q. Now, how about your privacy? Did you feel that this was
10 an invasion of your privacy, dealing with Wells Fargo?

11 A. Yes. I felt like they were putting me on a path where I
12 was sending a lot of private information to multiple people at
13 their company, through multiple ways.

14 Q. And how did you feel -- you were a victim of identity
15 theft. How did you feel about having to constantly send Wells
16 Fargo identifying information, like passport or Social
17 Security number, things like that?

18 A. It seemed like a really bad idea.

19 Q. Did you feel you had control of the information on your
20 credit report related to Wells Fargo?

21 A. No.

22 Q. Who had control over that?

23 A. Wells Fargo did.

24 Q. Now, after you learned that the account -- or after you
25 were told that the account was removed from your credit report

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1 in 2018, did you still worry about it?

2 A. Yes. I mean, not as much, but I just didn't trust them
3 as, like, whatever they are. I mean, they're a bank, but
4 they're also just a collection of people with machinery in
5 there that puts them all together as a group. And I just no
6 longer trusted them to do the right thing. I mean, I
7 wondered, okay, they took it off like that, but I don't know.
8 They're just disorganized.

9 Q. Did you not seek credit because the Wells Fargo was on
10 your credit report?

11 A. Yes.

12 Q. Can you tell us which instances in which you decided not
13 to seek credit?

14 MR. PETERSON: Objection, relevance.

15 THE COURT: Sustained.

16 MR. SOLA: May I be heard, Your Honor?

17 THE COURT: No.

18 BY MR. SOLA: (continuing)

19 Q. Do you feel this problem with Wells Fargo affected your
20 freedom?

21 A. Yes. We didn't -- we real like to just travel and be
22 together. But, also, there's sort of like a financial
23 freedom. So we didn't -- I didn't feel it was prudent to go
24 on any long trips during this period, because I felt like at
25 any moment, like they could sue me or take it out of the bank

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1 account, and I wouldn't be able to handle it again from
2 somewhere far away. So it felt prudent to stay in Portland.

3 MR. SOLA: That's all the questions I have.

4 THE COURT: Cross-exam.

5

6 CROSS-EXAMINATION

7 BY MR. PETERSON:

8 Q. Good afternoon, Mr. Sponer.

9 What year did you -- did your company that you had
10 the interest in sell?

11 A. I'm bad at -- let me see. Sorry. It's been a long day.
12 I was 36 or 37, and I was born in 1976, so what is that? 2012
13 or '13, yeah.

14 Q. Okay. And is that when -- after that sale, is that when
15 you purchased your boat?

16 A. Yes, after that sale.

17 Q. And you had mentioned -- when Mr. Sola was asking you
18 questions, you stated that this trip was -- this New Zealand,
19 Fiji trip was a trip of a lifetime. But it wasn't your first
20 extended sailing trip as a family, was it?

21 A. So you're talking about the period after I sold the
22 company?

23 Q. You sailed around the Caribbean for a couple of years, you
24 said, correct?

25 A. Yes.

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1 Q. And then came back to Portland for a while, correct?

2 A. Yes. That was for my daughter's surgery.

3 Q. And then left again on the trip that is at issue here,
4 correct?

5 A. Yes.

6 Q. We need to get our technology caught up here just for a
7 second, so -- how did you -- where did you grow up?

8 A. In a small town in Pennsylvania called Point Marion.

9 Q. How did you get involved with sailing?

10 A. My brother knew how to sail and took me out one day on,
11 like, a rented boat, and I just got an interest in it. So I
12 read a lot of books on it and found something really
13 compelling and fun.

14 Q. And was the boat that you purchased in 2012, '13, was that
15 the first boat you owned?

16 A. No.

17 Q. What had been your past ownership history of boats?

18 A. I had -- I don't know when my first boat was purchased. I
19 don't know.

20 Q. What type of boats have you owned?

21 A. The first one was called a Passport 40, which is like a
22 late seventies -- sorry. I'm not answering the right
23 questions.

24 Q. What type of boats?

25 A. Oh, sailboats.

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1 Q. You looked at a series of documents with Mr. Sola, and
2 we're going to look at a couple of them again, if you
3 could -- we're going to show you Exhibit No. 2.

4 Do you have it on your screen now?

5 A. Yes.

6 Q. It made it.

7 And you testified about this. This is the letter
8 that your attorney, Mr. Charne, wrote to Wells Fargo, correct?

9 A. Yes.

10 Q. And did Wells Fargo respond to this letter?

11 A. I don't know.

12 Q. I'll have you look at what's been marked as Exhibit 501.
13 Have you seen this document before, Mr. Sponer?

14 A. Yes.

15 Q. And what's the date on this document?

16 A. October 26th, 2016.

17 Q. And how would you describe this document?

18 A. This is the cover letter to the fraud affidavit packet
19 that you sent.

20 Q. And this is a letter from William Brady of the Wells Fargo
21 Dealer Services fraud department, correct?

22 A. Yes.

23 Q. And if I could have you look, there's some bullet points.
24 And one of them is under the "What you need to do," and it
25 lists several things. Do you see that?

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1 A. Yes.

2 Q. And it states to complete the fraud affidavit, to obtain
3 and provide a copy of your Social Security card, a copy of
4 your driver's license, and a copy of the police report,
5 correct?

6 A. Yes.

7 Q. And this was in October of 2016, shortly after
8 Mr. Charne's first letter, correct?

9 A. Yes.

10 Q. And you reviewed -- this letter is dated October 26th, and
11 we've already established you were largely unavailable during
12 that time period; is that correct?

13 A. Yes.

14 Q. But you received this letter ultimately?

15 A. Yes.

16 Q. And you received this letter prior to your January 19th
17 letter to Wells Fargo, correct?

18 A. No, I'm not sure.

19 Q. You had your deposition taken in this case, correct?

20 A. Yes.

21 Q. And do you recall in your deposition that you answered a
22 similar question that you had, in fact, reviewed this letter,
23 Exhibit 501, prior to drafting your January 19th letter?

24 A. Oh, the date is January of 2018?

25 Q. Sorry. Your January 2017 letter, your first

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1 correspondence to Wells Fargo.

2 A. I believe I was wrong.

3 Q. In your deposition, when you testified that you reviewed
4 the letter of October 26th, you were incorrect at the time of
5 your deposition?

6 A. Yes.

7 Q. Now, you filled out -- after your deposition, you reviewed
8 it and filled out a piece of paper that's called an errata,
9 that lists what the mistakes were, correct?

10 A. Uh-huh.

11 Q. And is that on the list of mistakes that you provided?

12 A. I don't think so.

13 Q. But your testimony now, today, has changed; and that is
14 that you didn't, in fact, see the October 26th letter before
15 your January letter?

16 A. Yes.

17 Q. Looking at Exhibit 501, does that have direct contact
18 information for Mr. Brady on it?

19 A. I don't see any. I don't know.

20 Q. Well, if I could have look, there's a numeral 3 right in
21 the middle of the page. It says, "Mail your documents to,"
22 and do you see an address there?

23 A. Yes.

24 Q. And then if you look in the bottom, right before the
25 signature block, it actually has a phone number as well as an

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1 extension to this individual in the fraud department who is
2 dealing with your claim, correct?

3 A. I believe that's what it says. I'm not clear if the
4 extension goes to that person directly.

5 Q. Well, it says, "Please call me," correct, and it's signed
6 by Mr. Brady?

7 A. No, you're right, yes.

8 Q. You never called Mr. Brady, did you?

9 A. No.

10 Q. At the time that Mr. Charne wrote his initial letter to
11 Wells Fargo in October -- or on October 19th, he wrote several
12 letters to other creditors at that time, didn't he?

13 A. I don't know. I don't think so.

14 Q. At the time he wrote this letter, October 19th, you don't
15 believe he wrote to other creditors? Do you know if he wrote
16 to any of the credit reporting agencies?

17 A. Oh, I know that he wrote to the three credit reporting
18 agencies.

19 Q. One of the attachments -- and I just want to talk about
20 this briefly. One of the attachments is the limited power of
21 attorney, on Exhibit 2. And I believe you testified, maybe in
22 respect to a different notary, that you used an online notary;
23 is that correct?

24 A. Yes.

25 Q. And describe that process for us. Where were you when you

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1 had this limited power of attorney on Exhibit 2 notarized?

2 And that's on page 3 of Exhibit 2.

3 A. I was in Fiji.

4 Q. And so you testified earlier that you had a very poor
5 Internet connection with Fiji, correct?

6 A. Yes.

7 Q. How was the video with that online notary?

8 A. There's a lot of different types of Internet. And I
9 believe I did this when I had wifi.

10 Q. So it was a clear picture?

11 A. I don't remember.

12 Q. I'll have you look at what's been marked as Exhibit No. 4.

13 Exhibit No. 4 is one of the credit reports that you
14 identified. This one is dated October 27th, 2016. And if I
15 could have you look at the second page of the exhibit, and I
16 want to look at a couple of these accounts. There's an
17 account there on the page that says "Best Buy." It says "days
18 past due."

19 Now, that Best Buy account was a fraudulent account,
20 wasn't it?

21 A. I'm sorry. I didn't understand. It was a what?

22 Q. The Best Buy account was the result of the identity theft,
23 correct?

24 A. Yes.

25 Q. And towards the bottom of that page, there was a Kohl's

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1 account. That was the result of identity theft, correct?

2 A. Yes.

3 Q. And on the next page, there's a Macy's account. That one,
4 I believe you also testified, was identity theft related?

5 A. Yes.

6 Q. And there's also -- on that same page there's an Office
7 Depot account. Is that also identity theft related?

8 A. Yes.

9 Q. And on the bottom of that page, there's one that's
10 THD/CBNA. Is that a credit report -- or, sorry, an identity
11 theft-related report?

12 A. Yes.

13 Q. So it's certainly fair to say as of October 27th, the
14 Wells Fargo account was nowhere near the only fraudulent
15 account on your credit report; is that true?

16 A. Yes.

17 Q. I don't -- I know towards the end of your testimony with
18 Mr. Sola, you talked about when you received the first
19 reports. I know you mentioned the November 9th report, but do
20 you know when you received this October 27th report, when you
21 actually saw it?

22 A. No.

23 Q. If I could have you look at Exhibit No. 5 -- actually, I
24 find these TransUnion reports much easier to read. There is a
25 nice heading in the middle of the page that says "Adverse

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1 Accounts." Do you see that?

2 A. Yes.

3 Q. And there are several adverse accounts listed on this
4 November 9th report, correct?

5 A. Yes.

6 Q. And that includes Best Buy, Kohl's, Office Depot, and the
7 Wells Fargo Auto; is that correct?

8 A. I'm sorry. I didn't see them all on the --

9 Q. So moving on to the next page, it continues on to the next
10 page.

11 A. I want to be right. I believe you're right, but you
12 listed four companies, and then I don't know.

13 Q. Sure. So going back to the first page of this, there's
14 Best Buy and Kohl's. Those were both fraudulent, correct?

15 A. Yes.

16 Q. And on the second page, there's Office Depot?

17 A. Yes.

18 Q. And there's also the Wells Fargo account, correct?

19 A. Yes.

20 Q. And further down that page 2 of this exhibit, there's a
21 heading that says "Satisfactory Accounts." And those first
22 three accounts listed there, are those all true accounts?

23 A. Yes.

24 Q. And then looking on the second page -- or, sorry, on the
25 third page, on the top -- and this is a continuation of that

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1 Satisfactory Accounts section. It lists -- the first two
2 accounts on that page are Macy's and Home Depot. Are those
3 accounts that ultimately became part of the fraudulent
4 accounts?

5 A. Yes.

6 Q. You testified that you rented -- or made an office
7 available for you to rent on a daily basis; is that right?

8 A. Yeah. It was a desk, like at one of those -- I think here
9 they're called work space or something.

10 Q. And you could just rent by the day, whenever you felt like
11 it? You didn't have to sign any sort of lease?

12 A. That's correct.

13 Q. And I believe you testified that time frame was end of
14 November through end of December?

15 A. No. End of November to the beginning -- I think it
16 was -- I guess -- I'm not supposed to guess, but it was in
17 January.

18 Q. Well, did you -- you sent a series of letters to a variety
19 of creditors in January of 2017, correct?

20 A. Yes.

21 Q. Did you write those letters from that office?

22 A. I don't remember.

23 Q. I'd like to have you look at what was marked as Exhibit
24 No. 9.

25 Mr. Sponer, you identified this as your

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1 correspondence with one of the district attorneys, I believe,
2 involved in the prosecution of the identity thief; is that
3 correct?

4 A. Yes.

5 Q. And I'd like to have you look at -- there's a
6 paragraph -- I think it's the third paragraph in the top
7 e-mail from you that said, "May I ask that you send me what
8 you think may be appropriate about this case?" Do you see
9 that paragraph?

10 A. Yes.

11 Q. And it says you're looking to forward to various debt
12 collection agencies, creditors, and credit reporting
13 companies, correct?

14 A. Yes.

15 Q. So you were looking for information to send to all your
16 creditors, not just to Wells Fargo, correct?

17 A. That's correct.

18 Q. Did other creditors request a copy of any police reports?

19 A. I don't know actually.

20 Q. Did you send the police report to other creditors?

21 A. Yes, but -- I don't know if it's appropriate. Can I add
22 something about -- probably not. Like two questions ago.

23 Q. Well --

24 A. Okay. I won't. Sorry.

25 Q. Let's have you look at Exhibit 10.

1 THE COURT: This is a good time to stop, as we're
2 turning to another exhibit.

3 Members of the jury, we'll take our evening recess at
4 this time. When you get home, those people that are there are
5 going to want to know what it is that you're doing. Please
6 let them know that you cannot discuss the case because
7 Hernandez said so.

8 And when the case is over, by the way, you can talk
9 about it to your heart's delight. But until that time, I will
10 remind you of the precautionary instruction directing you not
11 to discuss the case or do research or any of those things.

12 With that, have a pleasant evening. I will ask you
13 to be in your jury space -- let's say at about 10 minutes to
14 9:00. We'll try to get started right at 9:00.

15 If you have any further questions, you can pose them
16 to Jennifer at this time.

17 Have a pleasant evening. Thank you again, and I will
18 see you tomorrow morning.

19 (The jury leaves the courtroom.)

20 THE COURT: Be seated.

21 Mr. Sola, I noticed, as some of the exhibits were
22 flashing through, that your client's Social Security number is
23 fully set forth in at least one of the exhibits. That's not
24 appropriate. It needs to be blacked out. And so to the
25 extent that those -- you should check to make sure that his

1 Social Security -- because these become public records, all
2 the exhibits. So please make sure that your client's Social
3 Security number gets blacked out on any exhibits, or at least
4 the first two-thirds of it.

5 MR. PETERSON: Your Honor, on that point, we raised
6 that issue with plaintiff's counsel and heard no response.
7 They have provided us also with unredacted copies. So what's
8 uploaded on our technology are all unredacted copies. So we'd
9 ask that they redact and send us the new copies, so we can
10 upload rather than our having to go through and redact their
11 documents.

12 THE COURT: Okay. You can get that done. It's just
13 in your client's interest not to have those things as part or
14 the public record.

15 MR. SOLA: Yes, I understand.

16 THE COURT: And as regards the objection made towards
17 the end, you were asking questions about whether or not your
18 client had decided not to apply for credit. It was that line
19 of questioning. And he stated that he had not. And you were
20 asking him to talk about some of the places where he may have
21 been wanting to ask for credit. There was an objection. It
22 was sustained. You wanted to be heard on it. I said no.

23 But so you understand my ruling, I don't want to know
24 about specifically other creditors. I think that's not
25 relevant. To the extent that he was affected by that decision

1 or by what was going on in his decision not to apply for other
2 creditors, again, if it goes to the emotional distress, I will
3 allow you to go down that line of inquiry. But there aren't
4 any economic damages, and I don't want the jury to get
5 confused that this application for credit may have triggered
6 some economic issues that are not part of this case. That was
7 the reason for my ruling.

8 MR. SOLA: I appreciate that, Your Honor. And the
9 chilling -- we call it chilling, and that's seeking credit.
10 So we believe it's separate damages, sort of like the freedom.
11 He's not --

12 THE COURT: Mr. Sola, I am letting you ask questions
13 that get to that point without asking about the specific
14 creditors. And so you're a clever lawyer, smart guy; you'll
15 figure out a way to do that. And on redirect I will allow
16 that area of questioning to be explored, again, to the extent
17 that it directly relates to emotional distress damages.

18 MR. SOLA: It's not a specific creditor. I just want
19 clarification, Your Honor. So it's more like "I was thinking
20 of getting another credit card, but because I knew my credit
21 report was bad, I didn't do that because it would have been
22 fruitless," and the emotional distress of just not being able
23 to do what you want to do.

24 THE COURT: That's fine. That's acceptable.

25 MR. SOLA: Okay. Thank you, Your Honor.

1 THE COURT: All right. Anything else?

2 I will see you tomorrow morning. Be here a little
3 early. I want you here at least 15 minutes before we start
4 trial to make sure everybody is here, in place, and ready to
5 go.

6 We're in recess.

7 By the way, if you want to check where you are on the
8 clock, Claire is the clock keeper. I think you have about
9 seven hours and 11 minutes was my recollection.

10 MR. SOLA: Okay. Thank you.

11 (The proceedings are adjourned on August 27, 2019 and
12 reconvened on August 28, 2019.)
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

10-16-19

NANCY M. WALKER, CSR, RMR, CRR
Official Court Reporter
Oregon CSR No. 90-0091

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